

Leavenworth: A History of the United States Disciplinary Barracks

By Nicholas William Foss

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Department of History, University of Canterbury

Supervised by Peter Field and Heather Wolffram

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Table of Contents

Acknowledgements.....	1
Abstract	2
Introduction	2
Chapter One: The Existing Sources and What They Lack.....	11
Chapter Two: Thomas Barr and the Origins of Reform	25
Chapter Three: Laymen in Leavenworth.....	50
Chapter Four: Pragmatic Alignment and Permanence	71
Conclusion	92
Bibliography	95

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Abstract

The United States Disciplinary Barracks at Fort Leavenworth, Kansas is America's only maximum-security military prison. Despite frequent references to it in American popular culture, little is known about Leavenworth's evolution as an institution. The existing sources on the subject tend to offer a factual account of which buildings were built when, and when certain vocational programs began operation, but they offer little analysis of the wider factors that influenced the development of the institution. This thesis argues that the evolution of Leavenworth into a permanent military institution has been driven by certain key events that have forced the intersection of the civilian and military spheres. By supplementing the analysis of military sources with that of unexamined civilian sources, such as memoirs from within the prison and newspapers, a broader understanding of the civilian pressures which helped drive Leavenworth's evolution is achieved. This thesis also relies on secondary literature to explain and analyse the wider context in which the prison existed, particularly the study of civil-military relations and its relevance to Leavenworth. Fort Leavenworth did not develop within a vacuum of military thought, but rather was influenced by key events that forced an intersection between the civilian and military spheres. The result of these changes has been the evolution of a military institution that has remained separate from the civilian penal system, while at the same time adopting some of the more functional methods of that system.

Introduction

“Man, they fry you if you’re wrong; they send your ass to Leavenworth.”¹ In the 2014 film *American Sniper*, Chris Kyle’s spotter delivers this line as Kyle, played by Bradley Cooper, is about to shoot an Iraqi child he believes to be carrying a grenade towards a group of United States Marines. The audience understands that the word “Leavenworth” means that, should his assessment of the situation be incorrect, then he will be punished under United States military law. The word itself has become a metonym for military justice, even among the civilian population. This is a common, long-lived trope in films about the American military. In the 1992 military legal procedural film, *A Few Good Men*, for example, Tom Cruise’s character, a judge advocate, facetiously states that, if found guilty of murder, his defendants will win “a lifetime at exotic Fort Leavenworth!”² Even as far back as 1977 in the television show, *M*A*S*H*, in the episode ‘Fade in, Fade Out’ Major Winchester asks Colonel Potter what will happen should he refuse to follow orders, to which Colonel Potter responds “Then you’ll be making gravel in Leavenworth!”³ In each of these instances the word “Leavenworth” is universally understood to mean the harshest punishments of American military justice.

Despite the use of “Leavenworth”⁴ in popular culture as a metonym for military justice, little is known about its development as an institution. The study of the prison’s history has been left to members of the military or those sympathetic to it. These sources do a good job of detailing the structural development of the prison, but they are too isolated in their analysis in the sense that they do not pay any attention to the broader historical context. The result is a linear narrative based on the

¹ Jason Hall, *American Sniper*, Directed by Clint Eastwood, Warner Bros. Pictures, 2014.

² Aaron Sorkin, *A Few Good Men*, Directed by Rob Reiner, Columbia Pictures, 1992.

³ *M*A*S*H*. ‘Fade In, Fade Out’ Episode 123, Directed by Hy Averback, Written by Jim Fritzell and Everett Greenbaum, CBS, 20 September 1977.

⁴ Leavenworth can have multiple meanings. There is a town Leavenworth, a civilian prison at Leavenworth, as well as a military base at Fort Leavenworth. From this point on in this thesis “Leavenworth” will refer to the specific Disciplinary Barracks at Fort Leavenworth, unless otherwise stated.

assumption that the past is an inevitable progression towards more humane principles. In contrast, this thesis deviates from such teleological narratives and examines the broader historical context within which the Disciplinary Barracks developed as a military institution and analyses the various internal and external pressures that acted on it. This thesis argues that the development of Leavenworth did not follow the traditional military-humanitarian narrative put forward by the existing sources, but rather was altered by events where the civilian and military spheres were forced to intersect. The value of abandoning the teleological narrative, and studying why Leavenworth developed into an institution that integrates civilian-humanitarian principles while remaining a separate military institution is that it creates a greater understanding of how military institutions in the United States develop in general. The military may be separate from society, but its values do not exist in a vacuum. The story of military justice is one of interrelation with the civilian sphere, rather than isolation from it. From this interrelation has emerged the pragmatic adoption of certain civilian methods that are simply more functional.

The factors which resulted in Leavenworth's evolution are primarily explained as a consequence of civil-military relations, and account for why the institution has developed into one which adopts both civilian and military ideals, while remaining distinctly separate from the civilian penal system. The theory of civil-military relations provides much of the context for the development of the Disciplinary Barracks as it explains the various internal and external pressures that determined its development as an institution. As such, this thesis relies on the works of eminent scholars in that field such as political scientist Samuel P. Huntington and sociologist Morris Janowitz.⁵ The debate between these two scholars speaks to the broader themes of this thesis. Huntington argues that the main cause of tension between civilians and the military is that society expects its military institutions to be both functional and at the

⁵ Samuel P. Huntington, *The Soldier and the State: The Theory of Politics and Civil Military Relations*, 4th Edition, (Cambridge: The Belknap Press, 1967).

same time conform to societal ideals.⁶ He calls this dichotomy the functional imperative and the societal imperative. The primary issue with this dichotomy is that it can interfere with civilian control of the military. If the military does not share the values of the society it protects, then the power of violence it holds could become dangerous to that society. Huntington defines two distinct methods of achieving civilian control of the military to deal with this issue; subjective control and objective control. Subjective civilian control requires strict oversight of the military by a specific civilian group, usually a government institution. Huntington is critical of this form of control, arguing that it leads to an expansion of the executive powers of government.⁷ Instead he argues for what he calls objective control, in which a distinct class of professional officers isolates itself from society and civilian politics, remaining politically neutral. He states that “subjective civilian control achieves its end by civilianizing the military, making them the mirror of the state. Objective civilian control achieves its end by militarizing the military, making them the tool of the state.”⁸

Sociologist Morris Janowitz was the first to challenge Huntington’s framework, by arguing that the best way to maintain civilian control of the military was to “civilianize” the military. Unlike Huntington, Janowitz argues that the values of the military are not isolated from those of society, but are rather a refraction of them.⁹ Janowitz argues that the best way to reduce the tension of civil-military relations is to “civilianize” the military, in the sense that military values should be even more closely related to those of the society it serves.¹⁰ This is known as convergence and has affected American military institutions to differing degrees throughout history. It is also more in line with Huntington’s

⁶ Huntington, *The Soldier and the State*, p. 2.

⁷ *Ibid*, p. 81.

⁸ *Ibid*, p. 83.

⁹ Janowitz, *The Professional Soldier: A Social and Political Portrait*, (Glencoe: The Free Press, 1960), p. 234.

¹⁰ *Ibid*.

“subjective control” model. Although he argues for more civilianizing of the military, Janowitz does not advocate for the destruction of military values entirely. Janowitz clarifies his position by stating that the

...narrowing distinction between military and non-military bureaucracies has not resulted in an elimination of fundamental differences, and there is no reason to assume that these differences will be eliminated in the future. Despite the rational and technological aspects of the military establishment, the need for heroic fighters persists. The pervasive requirements of combat set limits to civilianizing tendencies.¹¹

For Janowitz, the most desirable military is one that is separate from civilian society, but embodies as many civilian values as possible.

The primary issue in relying on convergence theory, or any sociological theory of civilian control of the military, for a historical study is that it could potentially create another teleological narrative. Janowitz’s contention is that convergence should be the ultimate goal for military institutions, which is based on the assumption that civilian values are superior to military ones. On the other hand, Huntington argues that objective control should be the ultimate end because civilian values can interfere with military functionality. Janowitz himself states that in the social sciences “there is a tendency to use each new set of findings as a fixed basis for projecting and extrapolating trends, with profoundly distorting consequences.”¹² There is also the fact that convergence is always one-sided in the sense that it is less of a transfer of values between the civilian and military spheres, and more of an imposition of civilian values on the military. Military values are rarely adopted by mainstream American society, hence the need for two separate justice systems. This thesis is not arguing that convergence is

¹¹ Janowitz, *The Professional Soldier*, p. 33.

¹² Morris Janowitz, *Introduction to Military Conflict: Essays in the Institutional Analysis of War and Peace*, (London; SAGE Publications, 1975), p. 11.

the primary goal of institutional development at Leavenworth, it simply uses Huntington's and Janowitz's existing framework to understand change in the institution from a historical perspective.

Convergence at Leavenworth was never predestined, nor can any universal formula for its adoption be extrapolated from its history. The story of Leavenworth is about alignment through pragmatic adoption of functional civilian methods during periods when the civilian and military spheres intersect, mainly during war. There is no overarching teleological purpose to this change, but neither is it meaningless. It occurs in response to the situation, hence the importance of analysing the wider historical context. For this reason, this thesis uses the phrase "pragmatic alignment" instead of "convergence" to describe the phenomenon in which Leavenworth has adopted certain civilian practices.

The story of military justice in America, and particularly that of Leavenworth, demonstrates what both Huntington and Janowitz were talking about when they discussed alignment values. Using the framework provided by Huntington and Janowitz, but without assuming their conclusions about desired ends, it is possible to analyse how Leavenworth evolved as an institution. There have been three significant events in which the intersection of the civilian and military spheres pushed the Disciplinary Barracks system towards more pragmatic alignment, resulting in the permanent institution that currently exists. Humanitarian reform for its own sake is rare in the military as military thinking tends to focus on the functional imperative. There are, however, times when the liberal values of the civilian population intersect with military institutions during times of historical pressure. This often results in the military adopting more liberal and humane practices, so long as those methods remain functional in a military context. Once a military institution, such as Leavenworth, achieves permanence this intersection can occur more gradually, instead of requiring events that cause extreme pressure by forcing the civilian and military worlds to intersect on a significant scale. The first significant event was the liberal reform instigated by Major Thomas Francis Barr. This provided the impetus for the creation of a more humane

and effective system of military incarceration, even though lack of civilian interest meant that purely military values took over. Those purely military values were tested to the extreme during the First World War when millions of civilians entered the armed service, giving the public a reason to pay attention to military justice again. The number of civilians who went through the Disciplinary Barracks system was the second major event that became the impetus for reform. The result, however, was piecemeal reform of military penology and military justice, followed by a return to the status quo. The final significant event that led to pragmatic alignment on a more significant scale came in the aftermath of Second World War and the passage of the *Uniform Code of Military Justice*. With the reforms that followed, the Disciplinary Barracks achieved permanence as an institution and could benefit from the lessons learned from the past. The evolution of Leavenworth that was caused by these events had no teleological purpose, the institution simply adapted to each situation in order to remain functional. The result is a separate military prison that adopts certain civilian policies in order to remain functional.

The existing narratives of progress do a good job of accounting for which building was built in which year and when certain programmes came into effect, but they do not offer any deeper historical analysis of these significant events. This makes the progress narratives a logical starting point for any comprehensive study of the Disciplinary Barracks. This thesis relies on the progress narratives, but contextualises them by adding analysis of the military justice system in general. These narratives are supplemented by analysing sources that have not been considered in conjunction with military penology, including civilian accounts of conditions within the prison and newspapers reporting on it. Secondary sources also provided the wider historical context to help explain the internal and external pressures that guided the development of the institution. Chapter one analyses the historiographical trends present in the scholarship on civilian penology in order to demonstrate the shortfalls of scholarship on military penology. Civilian penology is divided into three primary schools of thought. These can be defined as whiggish narratives of progress, revisionist narratives, and more well-rounded

histories that analyse the various contextual factors that influenced the development of prisons. Scholarship on military penology is dominated by the whiggish narratives of progress. Chapter two analyses the origins of the Disciplinary Barracks as the first significant intersection of the civilian and military spheres in the history of military justice in America. Thomas Francis Barr's move for humanitarian reform was the first shift towards a military prison that adopted certain liberal principles, but its implementation was frustrated by socio-economic factors that can be explained through the framework of civil-military relations. The Disciplinary Barracks may have been founded on the idea of convergence, but the isolation that existed between the civilian and military spheres at the time meant that the prison developed solely on military grounds.

The isolation of the military was shattered during the First World War when millions of civilians were either drafted or volunteered for service. Chapter Three analyses the experience of the Disciplinary Barracks during this time as the second significant event in the institution's history that created an impetus for reform. The purely military system that developed between 1870 and 1914 experienced extreme pressure with the induction of millions of civilians into the military which resulted in minor reforms to the justice system to keep offenders out of prison, and major reforms to the prison itself. The Board of Review was established after the war and the practice of manacled prisoners in solitary confinement was banned. The end of isolation was brief, and the status of civil-military relations returned to normal shortly after the war.

The Disciplinary Barracks system moved further towards Janowitz's idea of convergence during the Second World War. Chapter four analyses the unique circumstance of the Second World War and the effect on the Disciplinary Barracks as an institution. Unlike the post-Reconstruction period or the First World War, the state of civil-military relations during the Second World War was more favourable towards the military. The military was not isolated in its values like it had been before, and as such the public were more supportive of its institutions. This led to the development of the Disciplinary Barracks

into a convergent institution that combined military and civilian ideologies. Because the Cold War started directly after the Second World War, many military institutions became permanent fixtures in America. Leavenworth was one of the military institutions that became a permanent fixture.

Since the passage of the *Uniform Code of Military Justice*, the Disciplinary Barracks has been a permanent institution. Because of its permanent status, the institution has benefitted from the lessons of the past. Reform no longer takes a massive shock such as a world war to be forced through. Several amendments have been made to the system since it achieved permanent status, but none as drastic as previous periods. The Vietnam War era brought several reforms to the *Uniform Code of Military Justice*, but nothing on the scale of the previous three events of intersection.¹³

¹³ For a more comprehensive history of military justice reforms during the Vietnam War era see William Thomas Allison, *Military Justice in Vietnam: The Rule of Law in an American War*, (Lawrence; University of Kansas Press, 2007).

Chapter One: The Existing Sources and what they Lack

The history of the United States Disciplinary Barracks has been seriously neglected by academic historians. What few sources exist are written from the perspective of the military, either by personnel or those sympathetic to the army. As a result, the only prevailing school of thought on the development of military corrections takes the form of a whiggish narrative of progress driven by an inevitable wave of humanitarianism. The study of military corrections would benefit from the broader historical analysis that the history of civilian penology has undergone. Because there is more scholarly interest in civilian corrections, there has been an evolution in scholarship from a view of natural human progression towards more civilised methods, driven by a wave of humanitarianism in the nineteenth century, via more critical revisionist and Foucauldian views, to the more neutral view which takes into account external factors that affected reform efforts. This chapter will review this development of the scholarship surrounding civilian incarceration as a form of punishment and define the differing schools of thought as to what factors drove this reform. This provides a framework within which to criticise the existing historiography on the Disciplinary Barracks and shows where this thesis fits in within the broader historiography of military corrections.

Incarceration as punishment is a relatively new idea in human history. Although jails and prisons have existed for hundreds, even thousands of years, their purpose was not to punish but rather to hold offenders until they were tried, or until their actual sentence could be carried out. Sentences for criminals before the eighteenth century were often dominated by corporal punishment such as flogging, breaking on the wheel, or hanging. But after the eighteenth century there was a backlash against such brutal punishments, and so reformers looked to other methods of punishment which were considered

more humane.¹⁴ Debate within the scholarship continues as to the cause of to this humanitarian development within the criminal justice system. Crime historians before the 1960s argued that this was driven by a wave of humanitarianism which swept Europe. Based on this interpretation of history, humanitarianism was a natural progression. Historian Pieter Spierenburg labels these works as narratives of reform which “...presented a factual story, often naïvely, with emphasis on the benevolent motives of the actors involved.”¹⁵ One such example is Martin Southwood’s 1957 biography of John Howard, which chronicles his life as a prison reformer.¹⁶ The scholarship evolved from these kinds of narratives in the 1960s and 1970s when sociologists became interested in the institutionalisation of incarceration and its effects on social control. For example, Terrance Morris and Pauline Morris conducted a sociological study of Pentonville prison in 1963, one of the first which looks at sociological factors of social control rather than focusing on the efficacy or humanitarianism of certain penal methods.¹⁷ Motivated by what a modern observer would consider inhumane practices within prisons both of the reform period and of modern times, these studies led to a revisionist approach to the history of incarceration which challenged the humanitarian assertion of the earlier interpretations. As well as Morris and Morris’ study of Pentonville, other historians and sociologists began looking at more societal factors which contributed to the use of incarceration in Western society as a primary form of punishment. As historian Michael Meranze argues, the historiography of the late twentieth century problematises the narrative of humanitarian progress evident in the previous scholarship. On the subject of revisionists such as Rothman, Ignatieff, and Foucault, Meranze states that “Each as well, by

¹⁴ Edward Peters, ‘Prison before the Prison’ in *The Oxford History of the Prison: The Practice of Punishment in Western Society*, Norval Morris and David Rothman Edit, (Oxford: Oxford University Press, 1995), p. 3.

¹⁵ Pieter Spierenburg, *The Prison Experience: Disciplinary Institutions and their Inmates in Early Modern Europe*, (London; Rutgers University Press, 1991), p. 1.

¹⁶ Martin Southwood, *John Howard, Prison Reformer; An Account of His Life and Travels*, (London; Independent Press Limited, 1957), pp. 30-54.

¹⁷ Terence Morris and Pauline Morris, *Pentonville: A Sociological Study of an English Prison*, (London; Routledge & Kegan Paul, 1963), p. 1.

means of his historical construction, sought to show that, whatever the benefits of the decline [in corporal and capital punishments]—and none denied those—the forms that took their place were not transcendently rational but were themselves complex institutions of domination.”¹⁸ Historian Clive Emsley, however, critiques the revisionist and Foucauldian model for the dismissal and the “marginalizing of genuine humanitarian aspirations among penal reformers” during the nineteenth century as an “unhistorical moral judgement.”¹⁹ Spierenburg has offered similar criticism of the revisionist model saying that “In other fields of historical inquiry serious analysis likewise has been substituted for a naïve desire to praise or to blame the actors involved.”²⁰ In short, the earlier histories place too much emphasis on the humanitarian intentions of the reformers without taking into account the results, whereas revisionist works unfairly discount the intentions of those reformers based on those results. As Emsley argues, it is necessary to adopt an analytical approach which tries to understand the motivations of the penal reformers in their historical and cultural context, while at the same time looking to broader political, societal, and economic factors which influenced the ways in which attempts at prison reform turned out.

With Emsley’s criticism of civilian penology in mind, it is clear that the existing scholarship on the Disciplinary Barracks shares much in common with early civilian historiography. Limited academic interest in the subject has resulted in a tradition of whiggish interpretation of the development of military corrections, with little deviation from the narrative of progress and little criticism of the system. There are four main sources written on the history of the Disciplinary Barracks at Fort Leavenworth, all from members of the military or those sympathetic to it. Most are available digitally on the Defense

¹⁸ Michael Meranze, *Laboratories of Virtue: Punishment, Revolution, and Authority in Philadelphia 1760-1835*, (Chapel Hill: University of North Carolina, 1996), p. 5.

¹⁹ Clive Emsley, *Crime, Police, and Penal: European Experiences, 1750-1940*, (Oxford: Oxford University Press, 2007), p. 160.

²⁰ Peter Spierenburg, “From Amsterdam to Auburn: An Explanation for the Rise of the Prison in Seventeenth Century Holland and Nineteenth-Century America”, *Journal of Social History*, vol. 20, no. 3, (1987), p. 439.

Technical Information Center (DTIC) database, and are presented as an official narrative of the prison's history. The first official history of Leavenworth was written by Henry Shindler in 1910.²¹ Shindler hints at his pro-military leanings in his preface by writing "If these contents serve those in authority the undersigned will deem it an ample reward for time and labor bestowed during his leisure hours."²² Shindler's work presents a view of military corrections, which begins with the more barbaric methods of the eighteenth and early nineteenth centuries and moves to the more humane methods of incarceration. He quotes a report read before the House Committee on Military Affairs which stated that "A system based on the principles of humanity and reformation as well as justice, can, with lights of the present day, be adopted."²³ Shindler's narrative does not critique the methods used in the early period of the institution's history, and his narrative is similar to those of early histories written on civilian prison reform in the previous period. For example, Shindler praises the founder of the prison, Major Thomas F. Barr, for his humanitarian motivations. As with narratives of progress on civilian prisons, Shindler focuses on Barr's motivations and applies them to the prison without analysing the results of the policies or even looking into whether or not the methods used could be considered humane. Shindler praises the institution by stating that "Considering all the obstacles to be overcome, and the short time the prison has been in operation, the results so far must be deemed highly satisfactory."²⁴ His sources mostly consist of official annual reports from the various governors, which he reads uncritically. Although Shindler presents a one-dimensional narrative without analysis of outside factors contributing to the development of the institution, his reliance on unpublished and unavailable primary sources makes his work invaluable to the study of the prison.

²¹ This work is not available on the DTIC database, but is in the public domain. Henry Shindler, *History of the United States Military Prison*, (The Army Service School Press, 1911).

²² Henry Shindler, Preface to *History of the United States Military Prison*, (The Army Service School Press, 1911).

²³ Shindler, *History of the United States Military Prison*, p. 10.

²⁴ *Ibid*, p. 30.

As the first official history of the Disciplinary Barracks, Shindler's book has become the starting point for historians wanting to continue the narrative, and as such each subsequent work continues his narrative of progress. The following sources have all been digitised and uploaded to the DTIC online database to create a historical narrative of Leavenworth. The next source which took up where Shindler left off was written in 1957 by Howard Jones, and was originally published serially in the Disciplinary Barracks' prisoner publication, *Stray Shots* and was then published as a pamphlet in 1957 due to the fact that Shindler's was the last official history of the prison.²⁵ The similarity between the narratives presented by Jones and Shindler is understandable, given that the initial target audience of Jones' work was inmates within the prison. With no criticism of the system, Jones simply recounts the events of the founding with Barr as the driving force in a manner similar to Shindler. Following Jones' citation of Shindler, he simply gives a list of the numerous developments of the prison rather than giving reasons for their development. For example, Jones claims that during the development period of the early nineteenth century "The advanced concepts of reformation and rehabilitation were gradually being developed at the military prison."²⁶ Despite a brief mention of the fact that many "hindrances had to be overcome", Jones does not mention details about these methods of reformation and rehabilitation, nor does he analyse whether or not they were successful. He then goes on to describe which buildings were built in what year, and when expansions to the perimeter wall were made.²⁷ Again, this is a narrative of progress with little to no historical analysis.

Following on from Jones, was the most recent comprehensive history of the Disciplinary Barracks written in 1978 by Major Jerry S. Price.²⁸ Major Price's work again takes up the Shindler narrative where Jones left it and continues with the same thematic approach, and makes clear his

²⁵ Abstract in Howard N. Jones, *USDB History*, (Leavenworth: USDB Printing Press, 1957).

²⁶ Howard N. Jones, *USDB History*, (Leavenworth: USDB Printing Press, 1957) p. 6.

²⁷ *Ibid*, pp. 6-7

²⁸ Major Jerry S. Price, *History of the United States Disciplinary Barracks, 1875-Present*, (Fort Leavenworth: Combined Arms Research, 1978).

intentions to continue the narrative. “The purpose of this paper”, Price writes, “is to revise and update the existing historical documents into a comprehensive history of the United States Disciplinary Barracks.”²⁹ Again, beginning with Barr’s humanitarian reform and then progressing towards a modern and humane institution with little to no criticism of the system. Price continues to focus on the physical development of the prison stating what facilities and assets were built and when, without analysing the wider social and political context. Like Shindler and Jones, Price also places a significant amount of emphasis on the rehabilitation programs being run through the prison, without analysing whether or not they were successful. Following on from his predecessor, Price offers little analysis of the First World War period, and makes several factual errors and erroneous claims which are addressed later in this thesis. The main issue with Price’s work is that it follows the same formula as Shindler and Jones in that it is a narrative of progress without criticism and without analysis of the wider historical context.

The next work to continue the narrative of Leavenworth in the DTIC database was written by Raymond R. Youngs, a major in the US Military Police, who wrote a master’s thesis in 1983 entitled “A History of US Army Corrections”. Youngs follows the same descriptive formula as the previous sources, providing a factual account of the developments of Army Corrections since the beginning of the Republic. However, Youngs does touch on the issue of civilian pressure briefly in his conclusion. He states that:

Public pressure and opinion can affect Army corrections in many ways. Desertion and AWOL have been two crimes causing the Army problems since it began. Part of the reason being the lack of public support for punishment of these crimes. This can be seen as late as the 1970’s when President Jimmy Carter, influenced by public opinion, granted amnesty to deserters of the Viet Nam [sic] conflict. Without public support it is hard to control the situation. However, public

²⁹ Price, *History of the USDB*, Abstract.

pressure can have positive effects, such as that directed at Army corrections in the late 1960's which is probably the number one factor leading to improvements in the system.

While Youngs does identify the importance of civilian pressure in the period following the developments of the 1960's, he does not discuss the effects of civilian pressures in detail, he simply draws attention to them briefly. Furthermore, he does not use this aspect of analysis to explain the initial evolution of the United States Disciplinary Barracks at Leavenworth. This is an area where historical analysis needs to be improved.

The most recent book on the Disciplinary Barracks was written in 2010 by Peter J. Grande, who was a former administrator at the prison.³⁰ Grande does not mention his predecessors by name, but his narrative is written in the same style as Shindler and Jones. Although Grande's book is a compilation of photographs with explanatory notes, in those notes and his introduction he presents the same view of the progression of the institution as Shindler, Jones, and Price before him. For example, Grande stresses the same theme of Barr's humanitarian motivations in the creation of the prison, and does not critique the early methods of the institution.³¹

While the above-mentioned sources constitute the only existing scholarship on the Disciplinary Barracks which uses a historical approach, there are sources from other disciplines which address the subject of military justice. These sources can be used to substitute the revisionist gap in the historical scholarship as they are often critical of the system in general. Military justice in general often comes to the attention of civilian academics, but they generally avoid the historical approach and instead focus on issues from a theoretical and contemporary perspective. During periods of civilian indifference, scholarship around military law generally comes from the military's Office of the Judge Advocate

³⁰ This is not available on the DTIC database, but is available in print. Peter J. Grande, *Images of America: United States Disciplinary Barracks*, (Charleston: Arcadia Publishing, 2010).

³¹ *Ibid*, pp. 7-8.

General, published in the *Military Law Review* journal. Similar to Shindler, Jones, and Price, these sources are generally supportive of the military in the sense that they do not seriously critique the various aspects of military justice which are distinct from the civilian justice system. These sources are often supplemented or challenged by civilian academics during periods in which military justice garners public interest again. Whenever there is a war or other event involving a moral panic against military justice, there is a brief renewed interest in the subject. For example, in the wake of the Korean War Robert E. Joseph wrote an article for the *Journal of Legal Education*, drawing attention to the fact that many civilians were woefully ignorant on the subject of military law.³² Joseph argued that a course on military law was necessary for all law students due to the passage of the *Uniform Code of Military Justice* and the fact that many young American men, ignorant of military law, would find themselves in military service due to the needs of the Cold War.³³ However, with the exception of Joseph Bishop at Yale Law School, the subject of military justice remained the expert field of military academies and remained generally inaccessible to the public. As such, the study of military law is dominated by those within the military.

The primary argument of the military is that because civilian and military justice both have such differing goals, two distinct systems must be maintained. According to John Wigmore, an American jurist who made a comparative study of military and civilian justice in 1920, the sole purpose of military justice is to maintain and restore discipline.³⁴ The civilian penal system, argued Wigmore, cannot decide whether its purpose should be deterrence, retribution, rehabilitation or simply incapacitation of the offender.³⁵ It is for these reasons, Wigmore argues, that a separate system is required to maintain the

³² Robert E. Joseph, 'The Need for Including a Course on Military Justice in the Law School Curriculum', *Journal of Legal Education*, vol. 7, no. 1, (1954), pp. 79-83.

³³ *Ibid*, p. 80.

³⁴ John H. Wigmore, 'Some Lessons for Civilian Justice to be Learned from Military Justice', *Journal of Criminal Law and Criminology*, vol. 10, no. 2, (1919), p. 170.

³⁵ *Ibid*, p, 171.

discipline of the army and also to make military justice more efficient by keeping it out of the hands of the ineffective civilian system. To illustrate the difference between the civilian and military justice systems Joseph Bishop, a historian of military law, argues that there are four key reasons why the two systems must be kept distinct. Firstly, because the primary goal of military justice is to maintain discipline within the ranks, then punishment must be both swift and certain, which Bishop argues is not the case with the civilian justice system.³⁶ As to why this is necessary, Bishop states that “An army without discipline is in fact more dangerous to the civil population (including that of its own country) than to the enemy.”³⁷ Secondly, Bishop argues that because maintaining discipline is the responsibility of a unit’s commander that commander should have a measure of control over the system imposed to punish offenders. Such control is not possible under an impartial civilian system as maintaining discipline through punishment requires swift action.³⁸ Thirdly, there is the argument that many infractions under the *Uniform Code of Military Justice* are not actually crimes in the civilian sphere. Offences such as insubordination and desertion have no civilian basis, and it is therefore difficult for civilians without a military background to judge and punish offenders who commit these crimes.³⁹ The final reason Bishop gives is the fact that many military offences are committed by soldiers stationed overseas, and therefore outside the jurisdiction of US Federal Law.⁴⁰ Without a separate justice system these soldiers would either be unaccountable for their actions, or would be held to account by the local laws and customs of the country they happened to be stationed in. Bishop’s arguments showing the need for two distinct systems helps to illustrate the tension between the civilian and military worlds, especially when certain events inspire a renewed public interest in the subject. It is this school of thought which generally

³⁶ Joseph W. Bishop, *Justice Under Fire: A Study of Military Law*, (New York: Charterhouse, 1974), p. 21.

³⁷ Bishop, *Justice Under Fire*, p. 21.

³⁸ *Ibid*, p.24.

³⁹ *Ibid*, p. 24.

⁴⁰ *Ibid*, p. 24.

speaking has resulted in a lack of civilian scholarship on military justice, particularly on the subject of military corrections.

The late 1960s and early 1970s sparked a renewed public interest in issues of military justice with events such as the Vietnam War, the My Lai Massacre, and the Presidio Mutiny.⁴¹ The draft for the Vietnam War once again meant that civilians found themselves subject to military law. This was combined with events like the My Lai massacre which put the court-martial system into the public spotlight again, and the Presidio Mutiny which drew public attention to the conditions within military facilities of incarceration. These events sparked a renewed interest in the subject of military justice both from civilians and military sources. One example is the populist book *Military Justice is to Justice as Military Music is to Music* by Robert Sherill, written in the wake of the Presidio Mutiny, which argues that military justice is overly repressive, and needs to be completely civilianised. Sherill's main contention is that the military justice system values the discipline of the army more than actual justice and is therefore unjust and in need of civilian based reform.⁴² Sherill summarises the debate as:

The poles are quite distinct. At one end, the men who run the military system maintain that they must continue to have total domination over the lives of their personnel or the armed services will fall apart. At the other limit, many of the servicemen and their lawyers insist that they will accept no compromise, agree to no reform short of doing away with the military system of justice and delivering the servicemen to the jurisdiction of the civilian courts.⁴³

Furthermore, on the subject of the Presidio Mutiny Sherill states "The very success of public opinion in shaping some of the Presidio judgements only underscores the fact that many thousands of courts-

⁴¹ Stanley L. Brodsky, 'Crime and Justice in the Military Services', in *The Military Prison: Theory, Research, and Practice*, Edit. Stanley L. Brodsky and Norman E. Eggleston, (Carbondale: Southern Illinois University Press, 1970), p.7.

⁴² Robert Sherill, *Military Justice is to Justice as Military Music is to Music*, (New York: Harper & Row Publishers, 1970), p. 68.

⁴³ *Ibid*, p. 3.

martial send young men unjustly to prison without a voice being raised on their behalf.”⁴⁴ Similarly, in a more academic style than Sherill, Edward F. Sherman, writing in 1973, argues that the separate system of civilian justice and military justice only made sense in an era of volunteer armies.⁴⁵ In light of changes to the way in which the modern military is organized, Sherman argues that the military justice system should be civilianized as completely as possible in order to protect the rights of service personnel.⁴⁶

Seemingly in response to the same stimuli of the Presidio Mutiny, an article appeared in the *Military Law Review* entitled “The Constitutional Rights of Prisoners” written by Major Conrad Forays.⁴⁷ This was the first time since 1960 that the journal had addressed the military correctional system, so it is safe to assume that the article was inspired by the same event that inspired Sherill’s work.⁴⁸ Foray argues that the perception of the soldier as outside the constitution is no longer relevant with the modern changes to the structure of the military, and prison administrators need to take into account their rights which are compatible with institutional necessity.⁴⁹ According to Foray, Federal courts denied having any jurisdiction over military prisons to avoid hearing complaints of prisoners. He attributes this to “...a reluctance which undoubtedly stemmed from their recognition of the many problems faced by prison administrators and the courts’ own lack of expertise in the area.” He also states that complaints were inevitable in such a highly regulated environment.⁵⁰ Although Foray calls for prison administrators to respect the constitutional rights of prisoners, he is not really changing the pro-military rhetoric as he provides a wide scope for interpretation with his comment about “institutional necessity.” But at any rate, the fact that Foray’s article appears at the same time as civilian criticism in

⁴⁴ Sherill, *Military Justice is to Justice as Military Music is to Music*, p. 61.

⁴⁵ Edward F. Sherman, ‘Military Justice Without Military Control’, *The Yale Law Journal*, vol. 82, no. 7 (1973), p. 1401.

⁴⁶ *Ibid*, p. 1400.

⁴⁷ Maj. Conrad W. Forays, ‘Constitutional Rights of Prisoners’, *Military Law Review*, vol. 55, (1972), p. 1.

⁴⁸ LTC Ralph Herrod, ‘The United States Disciplinary Barracks System’, *Military Law Review*, vol. 8, (1960) pp. 35-73.

⁴⁹ Forays, ‘Constitutional Rights of Prisoners’, p. 36.

⁵⁰ *Ibid*, p. 3.

the wake of the Presidio Mutiny does demonstrate that civilian agitation does have an effect on military scholarship.

Revisionist civilian scholarship seems opposed to the pro-military argument for the existence of a separate military justice system. As part of this rhetoric for the civilianisation of the military justice system, two key critiques of the military correctional system emerged. Although most of the scholarly attention of the 1970s was focused on military law, there was a brief resurgence of interest in military corrections in 1970 and 1973. In 1970, in the wake of the Presidio Mutiny, the same event which inspired Sherill's work on military law, a sociological enquiry into the United States military correctional system was conducted by Norman Eggleston and Stanley Brodsky.⁵¹ Eggleston and Brodsky's edited compilation of sociological, criminological, and psychological works on military corrections was the first of its kind, bringing new sociological theories and critiques against military incarceration. For example, sociologist Richard L. Henshel contributed a chapter to the compilation entitled "Military Correctional Objectives: Social Theory, Official Policy, and Practice."⁵² Henshel argues that the rehabilitative goals espoused by the military administration of the prison, which are also espoused by Shindler, Jones, and Price, are simply rhetoric. "The philosophy", he states, "is something to be learned; something to have ready for recitation; it is not something to interfere with the day-to-day workings of the facility."⁵³ He further states that any improvement in military correctional policy is often linguistic rather than factual.⁵⁴ Henshel argues, in contradiction to Wigmore and Bishop, that the military cannot agree on what the goal of military corrections should be, resulting in a policy that is influenced by internal and

⁵¹ *The Military Prison: Theory, Research, and Practice*, Edit. Stanley L. Brodsky and Norman E. Eggleston, (Carbondale: Southern Illinois University Press, 1970).

⁵² Richard L. Henshel, 'Military Correctional Objectives: Social Theory, Official Policy, and Practice', *The Military Prison: Theory, Research, and Practice*, Edit. Stanley L. Brodsky and Norman E. Eggleston, (Carbondale: Southern Illinois University Press, 1970).

⁵³ *Ibid*, p 30.

⁵⁴ *Ibid*, p 29.

external pressures rather than a policy that is rationally guided towards a specific goal.⁵⁵ He further emphasises this by pointing out that the existing theories on penology and criminology were formed with the civilian example in mind and therefore cannot be directly applied to the study of military corrections without adaptation.⁵⁶ Here, Henshel is giving credence to pragmatic alignment as a consequence of civilian pressure. However, he does not analyse the historical context that led to this, he simply observes it from a contemporary sociological perspective.

In 1973 civilian attorney Robert Plotkin wrote an article entitled 'Unknown Soldiers: The Plight of the Military Prisoners'.⁵⁷ Plotkin argues that despite all of the advances in the procedures of military justice itself, the rights of the accused still end at the door to the military prison.⁵⁸ He goes on to argue that public interest has been waning with rising negativity towards the military in general.⁵⁹ Civil libertarians tend to focus on the rights of servicemen but leave out the rights of military prisoners. As Plotkin himself puts it: "It is ironic that in a country so passionately concerned with the treatment of its prisoners of war, the treatment of its own incarcerated soldiers has been so long neglected."⁶⁰ Again, Plotkin's approach is from a legal perspective, not a historical one. His criticism is based on certain legal principles common to most of the American public. As such, his approach is similar to the revisionist school of civilian penology and would benefit from a broader historical analysis of the origins of the military correctional system.

After Plotkin's article, the issue of military justice faded from public interest again until recent developments. According to attorney Eugene Fidell, the War on Terror is bringing military justice back

⁵⁵ *Ibid*, p. 31.

⁵⁶ *Ibid*, p 33.

⁵⁷ Robert Plotkin, 'The Unknown Soldiers: The Plight of Military Prisoners', *American University Law Review* vol. 22, no.3, (1973), p. 581.

⁵⁸ *Ibid*, p. 582.

⁵⁹ *Ibid*, pp. 582-583.

⁶⁰ *Ibid*, p. 583.

into the public interest again.⁶¹ Fidell states that the War on Terror has sparked new debates over military justice, especially regarding the questions such as whether enemy combatants like Khalid Shaikh Mohammed should be tried by a federal district court or by a military commission. This debate has been hampered by civilian disengagement with military justice over the past thirty years, further demonstrating the effects of the ebb and flow of public interest in the subject.⁶²

The current scholarship on the subject of US military corrections is stagnant. Unlike the study of civilian penology, it has remained stagnant and failed to move beyond the whiggish narrative of progress. It is for this reason that this thesis fills the gap in the military historiography. Inspired by the framework provided by the evolution of scholarship on civilian prisons, this thesis first challenges the progressive narrative of the military sources, and provides broader explanations for what guided the development of military corrections. At the same time, one must be careful of falling into the same trap as the revisionists of the civilian school. To that end, this thesis seeks to understand the motivations of the reformers, particularly Thomas Francis Barr, while at the same time analysing the external political and societal factors which guided the institutional development of the Disciplinary Barracks. This approach will advance the historiography on military corrections by bringing it into line with the parallel civilian counterparts. Particularly, by focusing on the external and internal pressures forced on the system by civilians.

⁶¹ Eugene R. Fidell, 'Military Justice Instruction in Civilian Law Schools', *Journal of Legal Education*, vol 60, no. 3, (2011), pp. 472-479.

⁶² *Ibid*, p. 472.

Chapter Two: Thomas Barr and the Origins of Reform

The United States Disciplinary Barracks was not developed as the result of isolated military reform. It was not a matter of isolated military development, but rather it was influenced by wider socio-economic and political forces, what sociologist Richard L. Henshel refers to as the “pushes and pulls from external pressures.”⁶³ However, Henshel does not define in detail what these “pressures” are, leaving a gap in the historical analysis of how the prison came to be. This chapter will fill the gap left by Henshel by explaining the origin of the Disciplinary Barracks, where it came from and how it developed. Understanding the relative isolation of the United States Army in relation to civilian society during the nineteenth century is a key factor in explaining the development of the Disciplinary Barracks. By analysing the pressures of civil-military relations, this chapter demonstrates how the institution developed into one dominated by the purely military ideology of maintaining discipline and how it escaped from civilian oversight. Keeping in mind historian Clive Emsley’s critique of the Foucauldian revisionism of civilian penology, the motivations of the founder, Major Thomas Francis Barr, must be understood in their proper historical context. Therefore, this chapter will not offer an “unhistorical moral judgement” of the Army’s motivations, but rather analyse the historical context of civil-military relations which resulted in the system of military incarceration in use during the First World War.

The ideological isolation of the US military in relation to civilian society is a key factor in explaining the external pressures which effected the development of the Disciplinary Barracks at Fort Leavenworth. This can be explained through analysis of the historiography of civil-military relations. There is a significant amount of scholarship on the subject of civil-military relations in the United States which further reinforces this idea. Although civil-military relations have been a contentious issue in America since the Revolution, the subject did not receive serious academic attention until after the

⁶³ Henshel, ‘Military Correctional Objectives’, p. 28.

Second World War when civilian control of the military once again became a major concern for American politicians. According to sociologist Morris Janowitz, scholarship on the effect of military institutions on the political process began after the Second World War, and it was the first time since Alexis de Tocqueville that any serious attention was devoted to the study of civil-military relations by scholars.⁶⁴ In the wake of the largest mobilization in American military history, civilians and military officials alike were concerned with reaffirming the American principle of civilian control of the military in an era where a large standing army was still required to deter the Soviet Union. The first significant work to tackle this issue was *The Soldier and the State*, written by the political scientist Samuel P. Huntington in 1957. In order to better explain the ideal of objective control, Huntington looks back to the late nineteenth century and at the factors which contributed to the professionalization of the officer corps and how isolation from the general public led to the military developing its own culture of patriotism and sacrifice, distinctly separate from the cultural focus on individualism present in civilian society. Huntington argues that this isolation from civilian society, and the lack of public interest in military affairs, allowed the military to focus on professionalization. The result of this separation was that the military institutions which were founded at the time reflected the values of the military, rather than society in general. Therefore, the Disciplinary Barracks at Fort Leavenworth may have been founded on principles related to subjective control and Janowitz's theory of convergence, but it developed into a system based on objective control. This had significant consequences during the First World War.

Huntington reinforces this idea of isolation by explaining what he considers the dominant civilian philosophy of the time; business pacifism. This ideology also further explains why American civilians were only concerned with military affairs when it involved matters of economy. According to Huntington, this ideology was focused on economic productivity and its proponents viewed war as both

⁶⁴ Janowitz, *The Professional Soldier*, p. 5.

immoral and wasteful. As a result, the adherents of business pacifism had a negative view of the military in general.⁶⁵ Therefore, militarism fell out of vogue with an American populace devoted to economic productivity.⁶⁶ Huntington states that “The prevalence of business pacifism made the dominant feature of post-1865 civil-military relations the complete, unrelenting hostility of virtually all the American community toward all things military.”⁶⁷ Furthermore, Huntington adds that where the business pacifist idea differs is that it changes the struggle between the civilian and military spheres from one of institutions or social groups, into a struggle between two distinct and conflicting ways of life.⁶⁸ Business pacifists believed that war was for the past because it had been rendered obsolete by industrialization. Because of this view, Huntington states, many business pacifists, such as Andrew Carnegie, believed that war could be guarded against by the Jacksonian ideal of an armed populace, rather than maintaining a standing army.⁶⁹ Huntington also argues that as well as this growing hostility towards the military in general, few economic groups had interests which lined up with the military. As such, the military became isolated socially, politically, and economically from the rest of society. Huntington further argues that congressional policy reflected the ideals of business pacifism. Since the conclusion of the Civil War the annual budget for military expenditures decreased slowly.⁷⁰ This led to the US army failing to keep up both with military technology, and in techniques with foreign powers. The resulting lack of funds meant that the military was unable to experiment with new techniques and technology.⁷¹ However, Huntington argues that Congress were not overly concerned with how the military conducted its affairs at this point in history, so long as they stayed within their budgetary constraints.⁷² The

⁶⁵ Huntington, *The Soldier and the State*, pp. 222-224.

⁶⁶ *Ibid*, pp. 222-223.

⁶⁷ *Ibid*, p. 226.

⁶⁸ *Ibid*, p. 224.

⁶⁹ *Ibid*, p. 226.

⁷⁰ *Ibid*, p. 226.

⁷¹ *Ibid*, p. 228.

⁷² *Ibid*, p. 258.

combination of lack of funds and lack of public interest allowed the military to develop its institutions in its own way, and Leavenworth was no exception.

While Huntington's ideas are foundational in the study of American civil-military relations, there has been debate amongst both his contemporaries and modern scholars on Huntington's argument for the isolation of the officer corps. The first major challenge to Huntington came from Morris Janowitz, in his book *The Professional Soldier*, written in 1960. Janowitz, Huntington's rival, claims that the extent to which the officer corps was isolated may be exaggerated, but he does concede that a degree of isolation did exist.⁷³ Furthermore, historian John M. Gates, writing in 1980, argues that the officer corps was not isolated from the society it protected, but was rather more engaged than Huntington or Janowitz give them credit for. Gates uses statistics on demographics to argue that the officer corps was not physically isolated from society on the frontier, as the majority of the officers were stationed in larger eastern cities.⁷⁴ Gates goes on to argue that those officers most involved in the professional development of the military were the least physically isolated from society, having more social contact with the civilian world than the rest of the army.⁷⁵ He then goes on to argue against Huntington's homogeneous view of Congress, arguing that neither full support nor condemnation of the military were universal stances among the politicians. In more recent years, social scientist Suzanne Nielson, writing in 2009, argues that Huntington fails to adequately address the influence that national political purposes can have on military institutions.⁷⁶ Nielson's is a key insight for the study of Leavenworth, as the Disciplinary Barracks was often subjected to congressional budget cuts for political reasons. Despite these disagreements, most scholars agree that Huntington's ideas are foundational to the study of civil-military relations.

⁷³ Janowitz, *The Professional Soldier*, p. 15.

⁷⁴ John M. Gates, 'The Alleged Isolation of the US Army Officers in the Late 19th Century', *Journal of the US Army War College*, vol. 10, no. 3, (1980), pp. 32-33.

⁷⁵ *Ibid*, pp. 34-35.

⁷⁶ Suzanne C. Nielson, 'American Civil-Military Relations Today: the Continuing Relevance of Samuel P. Huntington's *The Soldier and the State*', *International Affairs*, vol. 88, no. 2, (2012), p. 373.

Nielson states that “Huntington’s framing of the issues involved remains an essential foundation on which evolving understandings rest.”⁷⁷

Despite the debate, modern scholars agree with Huntington’s analysis of the state of civil-military relations in the late nineteenth century. Historian Charles A. Byler’s 2006 book, *Civil-Military Relations on the Frontier and Beyond*, is a comprehensive study of civil-military relations in late nineteenth century America. Byler’s argument demonstrates that, while individual officers may have had political connections with Congress, the corps in general stayed out of politics. Byler further argues that the public did have a negative view of the army in general in the late nineteenth century due to a combination of factors including Reconstruction, and the demographic make-up of the army.⁷⁸ Byler also puts the lack of funding into political context, rather than making homogeneous claims about the opinions of Congress. According to Byler, support for the military during the Reconstruction period came primarily from the Republican majority, however this support ended when Reconstruction came to a close.⁷⁹ Byler also separates the lower echelon soldiers from the officer corps. He demonstrates that during the nineteenth century the army was recruited from a decreasing section of the population, consisting mainly of the lower class. The public viewed the common soldiery as a group of “bummers, loafers and foreign paupers.”⁸⁰ This further demonstrates that the American public had a generally negative view of the military during the late nineteenth century. As such, both of these schools of thought on the ideological isolation of the military are useful in explaining different elements of how the Disciplinary Barracks developed as an institution, both in ideology and in the correctional methods used within the prison walls.

⁷⁷ Nielson, ‘Civil-Military Relations Today’, p. 370.

⁷⁸ Charles A. Byler, *Civil-Military Relations on the Frontier and Beyond, 1865-1917*, (Westport: Praeger Security International, 2006), p. 2.

⁷⁹ *Ibid*, p. 26.

⁸⁰ *Ibid*, p. 4.

Thomas Francis Barr, the founder of the prison, does not fit into Huntington's isolated officer stereotype and the existing military sources offer little analysis of the significance of his previous status as a civilian lawyer or his ideology. The progress narratives presented by Shindler, Jones, and Price give Barr a great deal of credit for providing the initial drive to reform military incarceration, but they do not provide much detail, nor do they analyse his character. For Jones and Grande, Barr is simply the founder of the institution, and that he is still known as the "father of the US military prison."⁸¹ Price simply states that Barr's letter to the Secretary of War in 1871 requested that a military prison be considered "for reasons of economy and the existing lack of Department of War control over military offenders in state institutions."⁸² As with previous facts about the early development of the Disciplinary Barracks, Shindler was the source for this insight. Shindler does go into further detail than his successors by offering a brief personal history of Barr in which he gives limited details of Barr's civilian education. According to Shindler, Barr was a lawyer in his civilian life, served as a civil servant in Washington during the Civil War, after which he entered into private practice.⁸³ Shindler then states that Barr was transferred to the Regular Army on 26 February 1867. Here, Shindler has omitted a crucial fact which differentiates Barr from the isolated officer class which Huntington argues for. According to the *Who Was Who in America* entry for Barr, he was appointed as a Major in the Judge Advocates on 26 February 1865.⁸⁴ The significance of this is that Barr never attended West Point, nor did he ever serve in the military proper. As such he does not represent the stereotype of Huntington's isolated nineteenth-century US military officer. Barr was a civilian lawyer who gained his knowledge of US military law from his time as a civil servant in Washington. This shows that there is a civilian influence even at the very beginning of the

⁸¹ Jones, *USDB History*, p. 2.

⁸² Price, *History of the United States Disciplinary Barracks*, p. 1.

⁸³ Shindler, *History of the United States Military Prison*, p. 98.

⁸⁴ 'Barr, Thomas Francis', *Who Was Who in America, Volume 1: 1897-1942*, (Chicago: Marquis-Who's Who, 1968), p. 60.

Disciplinary Barrack's inception, making Barr's ideology an important component in understanding where the drive for reform came from.

Barr's ideology fits the description of the liberal Republican reformers of the Gilded Age. In his book, *"The Best Men"*, historian John G. Sproat argues that a class of educated liberal Republicans emerged after the Civil War that took a moderate approach to reform. "Liberal reform", Sproat argues, "was pre-eminently the instrument of the 'best men' in American society..."⁸⁵ For Sproat, these were men who shared a liberal ideology rooted in the Republican tradition and had a positive view of the outcomes of the Civil War. According to Sproat, "most liberals were optimists, confident that the Civil War had been a creative experience rather than a sterile national disaster."⁸⁶ While they shared an "orthodox liberalism that is idealistic and sternly inflexible", they still had a moderate approach to reform.⁸⁷

Barr fits the description of one of Sproat's "best men" liberal Republican reformers. While Barr's works on military penology are scarcely available, his works in other areas offer a glimpse into his personal ideology. This reinforces the idea that the development of the Disciplinary Barracks has been the result of civilian pressure and civil-military relations rather than just a whiggish progression or a military method of control through discipline. The first example is his character and how he was perceived by his peers. An article in *The National Tribune* from 28 March 1889 claimed that Barr "is learned in the law, and in military law especially is as high authority as Col. Winthrop or even Col. Lieber. He has an eminently judicial mind, and has also that enviable quality of thorough impartiality that enables him to thoroughly sink himself and see only the right or wrong of a question and the good of

⁸⁵ John G. Sproat, *"The Best Men": Liberal Reformers in the Gilded Age*, (Chicago: University of Chicago Press, 1982), p. 7.

⁸⁶ *Ibid*, p. 6.

⁸⁷ *Ibid*, pp. 8-9.

service.”⁸⁸ By comparing Barr to the two most prominent scholars of military law at the time, this article reinforces his academic qualifications, presenting him as an eminently worthy leader of the reform movement. However, it must be acknowledged that this view was confined to military and veteran circles. *The National Tribune* was a publication which catered to veterans and published mostly military affairs and stories. While it is difficult to analyse Barr’s impact on the civilian public, it is relevant that military circles viewed him in the same way that liberal Republicans viewed the leaders they thought ought to bring about the liberal reform they desired.

As well as the way he was perceived by his peers, Barr’s ideology also ties him to the liberal Republican movement of moderate reform. He held many of the views which Sproat identifies as representative of the liberal Republican movement. For example, in 1879 Barr gave a speech about how the Civil War should be commemorated in which he said “our tributes are not paid to courage...It was no gladiatorial contest in which we were engaged-a test of physical prowess of sections. It was a death grapple between right and wrong.”⁸⁹ This demonstrates that Barr held the moral view, shared by liberal Republicans at the time, that there was no moral equivalency in the Civil War. The North was morally right in its quest to defeat slavery, and the South was unequivocally wrong in defending it. Furthermore, Barr echoed the liberal sentiments in a paper he delivered on 13 December 1888 before the Military Order of the Loyal Legion of the United States entitled ‘Costs and Compensations of the War.’ In it, he states that “The world never before witnessed a more majestic uprising of a people. Great armies have been gathered by the Caesars and Napoleons of history, through the exercise of despotic authority, to destroy rival powers; but this was the springing forth of a people to maintain the integrity of their

⁸⁸ ‘Washington Gossip: The Week’s Doings at the National Capital’, *The National Tribune*, (28 March 1889), p. 5.

⁸⁹ Thomas F. Barr, *Memorial Address of Col. Thomas F. Barr, Judge Advocate, USA, Stillwater, Minnesota, May 30, 1879*, 4-5, American Antiquarian Society, Worcester, Mass. Quoted in; Alice Fahs and Joan Waugh edit, *The Memory of the Civil War in American Culture*, (Chapel Hill; University of North Carolina Press, 2004), p. 112

country and demonstrate the strength of a republic..."⁹⁰ This quote ties Barr to Sproat's argument that "most liberals were optimists, confident that the Civil War had been a creative experience rather than a sterile national disaster."⁹¹ Reinforcing this sentiment, Barr states that "This was the great immediate compensation. The cruel wrongs inflicted upon a timid race had been expiated in perfect retribution..."⁹² In the same speech, Barr further tied himself to the liberal Republican ideology by stating that "We as a nation are moving forward on true lines to that high position in the domain of government where the rights of the humblest will be as honestly conceded and as sacredly guarded as the rights of the most richly endowed with intellect and wealth."⁹³ Here, Barr confirms his desire for liberal reform in the sense that government should protect the rights of the individual, no matter their position in society. This demonstrates that Barr himself was a liberal Republican reformer, explaining where the initial idea for reform of the Disciplinary Barracks system came from. Not from the West Point bred officer class, but from a civilian lawyer educated in Massachusetts.

Barr's ideology provides further context for the report he co-authored detailing the British military prison system that he observed in Canada. While it was co-authored by Barr and three other career officers, his liberal Republican influence can be seen throughout the report. For example, the report states that "The evils of our own methods have been pointed out, and it is hoped that our service may be strengthened by their abandonment and the adoption of a system more in consonance with humanity and enlightened views of the present day."⁹⁴ Furthermore, the report states of the conditions of the prisoners at Castle Williams that "Very little hard labor can be found for them by the post

⁹⁰ Thomas F. Barr, 'Costs and Compensations of the War', *Military Essays and Recollections: Papers Read Before The Commandery of the State of Illinois, Military Order of the Loyal Legion of the United States*, vol. 1, (1891), p. 488.

⁹¹ Sproat, "The Best Men", p. 6.

⁹² Thomas F. Barr, 'Costs and Compensations of the War', p. 492.

⁹³ *Ibid*, p. 496.

⁹⁴ Thomas F. Barr, 'Report on the British system of Military Prisons', 1871. Appendices B in Shindler, *History of the United States Military Prison*, p. 114.

commandant, and living together, as they do, in casemates, which are never well adapted for prison purposes, their punishment is neither reformatory nor in accordance with their sentences.”⁹⁵ Placing emphasis on humane ideals and “enlightened” views echoes Sproat’s definition of the liberal Republican as being convinced of progress and “the perfectibility of man.”⁹⁶ The report goes on to state that during the inspection the board was “continually cautioned to bear in mind that the chief object of establishing a prison exclusively for military offenders is to maintain discipline in the Army, to reform offenders, and to repress repetition of military offences.”⁹⁷ While it could be argued that this is further evidence of Henshel’s argument that military corrections cannot make up its mind about what the goals of incarceration should be, it could also be argued that this demonstrates a desire to integrate both the military ideas of maintaining discipline with the civilian ideas of humane reform. From the military point of view, it is vital to maintain the discipline of the army by punishing military offenders and deterring further offences. But that does not discount the liberal Republican view of the “perfectibility of man” in the sense that they can be reformed. This all demonstrates that, thanks to Barr’s combined civilian background and military status, the prison began as a cooperative effort at creating a military institution which integrated liberal Republican elements that were prominent during the Gilded Age.

The impetus for reform may have been provided by the liberal sentiments of Barr, but they were to be implemented by military men. The “father of the US military prison” may contradict the nineteenth-century stereotype for a US army officer, but the early commandants do not. Those in charge of the day-to-day running of the institution had the most influence over how the founding principles were enforced, which is why it is important to analyse their background. The first commandant of the prison, Major James M. Robertson, was a veteran of both the Mexican War and the

⁹⁵ Barr, ‘Report on the British system of Military Prisons’ 1871. Appendices B in Shindler, *History of the United States Military Prison*, p. 114.

⁹⁶ Sproat, “*The Best Men*”, p. 5.

⁹⁷ Barr, ‘Report on the British system of Military Prisons’, 1871. Appendices B in Shindler, *History of the United States Military Prison*, p. 109.

Civil War. According to Shindler, Robertson gained “several brevets for distinguished, gallant, and meritorious service.”⁹⁸ Robertson may not have attended West Point, but he was a career officer who earned his promotions in the field. Robertson served as commandant from June 1875 until March 1877, at which point he was replaced by Major Asa Peabody Blunt.⁹⁹ Much like Robertson, Blunt was not a graduate of West Point, instead belonging to that class of men who volunteered for service during the Civil War and became ingrained in the military culture afterwards. Blunt served as commandant until 31 December 1887, when he was replaced by a man who fit every stereotype of Huntington’s nineteenth-century US Army officer. Captain James Worden Pope was a graduate of West Point, a decorated veteran of the Indian Wars, as well as the Spanish American War and the Philippine-American War.¹⁰⁰ Pope served as commandant at the Disciplinary Barracks from 1 January 1888 until its temporary closure on 30 June 1895. As such, in the early years the institution was run by purely military men who fit the stereotype of Huntington’s nineteenth-century officer class.

The ideology of these men when it comes to military justice is vital in understanding the emerging contradictions between the founding principles versus the practices of the institution. The purely military idea of discipline can be understood by analysing the ideas of the commandant, Captain Pope. Pope delivered a speech entitled ‘Crimes and Criminals in the American Army’ before the American Prison Association on 31 October 1891, summarising the views of the military towards corrections. In the speech, he explains the system of military incarceration under his command at the Disciplinary Barracks, while revealing elements of his military ideology which contradict Barr’s. Firstly, in his opening remarks Pope reveals a much more cynical view of the progress of civilisation than that of a liberal Republican of the Gilded Age. Going against the optimistic liberal view of human progress, Pope

⁹⁸ Shindler, *History of the US Military Prison*, p. 97.

⁹⁹ *Ibid.*

¹⁰⁰ *Ibid.*, p. 94.

focuses on the advancement in destructive military technology that emerged from progress. He states that “in the closing years of the century most noted for its prodigious strides in all the arts and sciences suited for the amelioration of the human race, but perverted for the chief part to the abuses of human destruction.”¹⁰¹ Further reinforcing this cynical view of human progress, Pope goes on to say that “Even railways, those peaceful harbingers of increased social intercourse and friendly inter-communication, are chiefly diverted to the rapid transport of armed hosts to battle...”¹⁰² This is in direct contrast to the liberal Republican view of the inevitable human progress, arguing that progress is a double-edged sword which needs to be taken into account when preparing military policy.

Pope uses this cynical breakdown of human progress to introduce his views on the necessity of military justice and maintaining the discipline of the army. Pope states that civilians ought to be interested in issues of military justice and maintain discipline due to how important it is for the defence of the nation.¹⁰³ Pope begins by praising the reformatory movements of the 1870s and their humanitarian influences that guided the institution in the early years, reinforcing the mythos of the founding.¹⁰⁴ But then he deviates from this idea, rejecting the ideas of cooperation with the civilian world towards isolation from it. On the military offence of desertion, Pope states that it is the most significant crime that the military justice system has to deal with.¹⁰⁵ Obviously it is vital for military discipline that deserters are caught swiftly and punished accordingly, lest other soldiers get the idea that there will be no consequences for shirking their military duties. But Pope goes on to blame civilian sentiments for the prevalence of the crime of desertion, demonstrating the civil-military divide. He states that “The difficulty of suppressing this crime is much increased by the thoughtless sympathy

¹⁰¹ J.W. Pope, ‘Crimes and Criminals of the American Army’, Speech read before Pittsburg Prison Congress, Pittsburg, 13 October 1891, p. 1.

¹⁰² *Ibid*, pp. 1-2.

¹⁰³ *Ibid*, p. 2.

¹⁰⁴ *Ibid*, p. 3.

¹⁰⁵ *Ibid*, p. 3.

engendered amidst a peace-loving and restriction-hating people towards one escaping from an exacting code of which so little realize the necessity.”¹⁰⁶ Further demonstrating his contempt for civilian sentiment, Pope states that “to dwell upon the crime [of desertion] would render this treatise too technical for this congress. It is sufficient to point to the supreme importance of its suppression and to indicate the detriment to army discipline which the uncalled for and thoughtless sympathy of civilians may occasion to that discipline.”¹⁰⁷ Here Pope is saying that civilian ideology is so antithetical to all things military that they do not understand the necessities of military discipline, which in turn are vital to their protection from foreign military threats. As Pope argues, progress brings with it destructive military capabilities, and if civilians do not understand what is required for defence then it should be left to the military. This line of thinking has significant implications for the development of the correctional policy at Fort Leavenworth, as it demonstrates a general hostility towards civilian involvement. Based on this, it is clear that policy has shifted from the cooperative sentiment expressed in the report of the 1871 inspection board, to a more isolated stance in keeping with Huntington’s idea of the nineteenth century officer class.

Pope further demonstrates his hostility towards civilian involvement by his negative comments on civilian oversight of the prison. For Pope, civilian involvement inhibits the military’s ability to reinforce discipline, or adequately reform an offender. One example of Pope’s negative viewpoint is his opposition to the policy that under the establishing act, the War Department had the power to grant clemency to inmates it deemed worthy. Pope opposed this policy as it produced “constant restlessness among the inmates engendered by the hope and expectation of release without regard to conduct.”¹⁰⁸ Again, this is tied to his belief that civilians are in no place to make decisions that affect military

¹⁰⁶ Pope, ‘Crimes and Criminals of the American Army’, p. 5.

¹⁰⁷ *Ibid*, p. 6.

¹⁰⁸ *Ibid*, p. 11.

discipline. For Pope, the release of an offender should be solely up to the military, with no interference from civilian oversight. Furthermore, Pope is highly critical of the annual inspections conducted by the military commissions board. Under the inspection criteria, each prisoner was allowed access to the officials of the board to make complaints about the conditions and their treatment, with no penalty for false accusations. Pope states that this aspect of inspection “constitutes an evil, because while prisoners should be allowed great freedom in making complaints no man should be allowed to make accusations except under penalty for falsehood.”¹⁰⁹ While this is a reasonable critique of the system, it still demonstrates Pope’s opposition to the inspection board. Inspections were run annually, so Pope was more responsible for the day-to-day running of the facility than them.

The juxtaposition of Barr and Pope perfectly demonstrates the contradictions inherent in the underlying ideology of the prison and the day-to-day implementation of it. Barr represents the idealist reformer who focused on humanitarian reform in line with the liberal idealism of the era. Whereas Pope represents the cynical officer in charge of implementing idealistic reforms with limited resources and a lack of inclination. Barr’s liberal Republican ideology is at the root of the Disciplinary Barracks as an institution, but in the era of civil-military isolation, his reforms struggled to achieve greater pragmatic alignment.

The pressures that influenced the development of correctional policy at Leavenworth were not limited to individual figure heads, as wider socio-economic factors were also involved. Barr’s push for reform represents internal and ideological pressures, while issues of funding and location represented wider external and political pressures. As Huntington identified with most other military issues of the era, the external pressure of economic concerns from the civilian world continued to influence the development of the Disciplinary Barracks. The first evidence of this can be found in the debate over the

¹⁰⁹ Pope, ‘Crimes and Criminals of the American Army’, p. 11.

location of the Disciplinary Barracks which demonstrates Huntington's argument about civilian lack of engagement with military affairs during this period unless money was concerned. After Barr's inspection of the British system of military prisons, the Secretary of War recommended that the House Committee on Military Affairs draft a bill for the establishment of a military prison. The board recommended two locations for the establishment of the prison, but the Committee on Military Affairs rejected these based on matters of economy. According to Shindler, the Committee believed that it would be cheaper to repurpose the buildings already at the Rock Island arsenal into suitable accommodation for prisoners rather than building an all new facility.¹¹⁰ As a further matter of economy, the Committee believed that some of the cost of upkeep could be offset by using prison labour in the cleaning, repair, and manufacture of munitions within the arsenal, thus rejecting the benefits of the British "shot drill."¹¹¹ But the Ordinance Board of the Army objected to the notion of allowing prisoners to work with munitions for obvious reasons. Despite these objections, Congress passed a bill on 3 March 1872 establishing the Disciplinary Barracks at the arsenal at Rock Island, Illinois. Secretary of War Belknap continued to press for the military argument that Rock Island was an unsuitable location for the prison and advocated that it be moved to the military reservation at Fort Leavenworth. A congressional debate ensued.

Further confirming Huntington's argument is the attention that the matter attracted in the local newspapers of Rock Island and Leavenworth respectively. National newspapers, or other state newspapers, paid little attention to the debate because as a military affair in the nineteenth century the public only paid attention when it affected their locality or major matters of economy. Both papers focus mostly on the economic benefits to their local area, rather than the benefits of the institution itself. The local paper of Rock Island, *The Daily Argus*, began attacking its own Congressman, John B.

¹¹⁰ Shindler, *History of the United States Military Prison*, p. 5.

¹¹¹ *Ibid*, pp 5-6.

Hawley, for supporting the motion to move the prison to Fort Leavenworth.¹¹² In subsequent articles of *The Argus* the paper attacked Hawley, stating that because he was supporting the motion to move the prison from Rock Island he was refusing to represent the interests of his constituents in that he was denying them the government revenue that an institution like a military prison would inevitably bring to the state.¹¹³ *The Argus* does mention a speech by the chairman of the House Committee on Military Affairs in support of the prison in which he stated that “it was in the interest of humanity and economy to have such an institution.”¹¹⁴ However, the paper tends to focus more on the economic issue of denying the local area the benefits of having a federally funded military institution, rather than the specifics of the institution itself. The fact that national and other state newspapers do not report on the debate in as much detail, or with as much vitriol, as the local papers of Rock Island and Leavenworth confirms Huntington’s argument that during the nineteenth century civilians were only really concerned with military affairs if they affected them in some way, including economically.

The local paper for the county of Leavenworth, *The Leavenworth Weekly Times*, was naturally very supportive of the idea that the prison should be established at Fort Leavenworth rather than Rock Island. In an article from 6 August 1874 supporting the re-election of congressman William A. Philips, *The Leavenworth Weekly Times* lists among his accomplishments, securing the passage of the bill which moved the Disciplinary Barracks from Rock Island to Leavenworth, thus saving the government \$80,000 as they did not have to buy the land.¹¹⁵ Furthermore, an article from 7 January 1875 again praises Philips for supporting the needs of his constituents by having the prison moved from Rock Island to Leavenworth.¹¹⁶ Again, the paper focuses on the economic benefits to the local area of having a

¹¹² ‘Mr Hawley and the Committees’, *The Daily Argus*, Rock Island, Illinois, (8 December 1873), p.4.

¹¹³ ‘Hawley and the Military Prison: He Refuses to Obey the Will of His Constituents’, *The Daily Argus* Rock Island, Illinois, (9 March 1874), p. 4.

¹¹⁴ ‘Mr Hawley and the Military Prison’, *The Daily Argus*, Rock Island, Illinois, (23 February 1874), p. 4.

¹¹⁵ *The Leavenworth Weekly Times*, (6 August 1874) p. 2.

¹¹⁶ ‘Letter Upon the Subject From Col. Philips’, *The Leavenworth Weekly Times*, (7 January 1875), p. 2.

federally funded military institution established there rather than the benefits of the institution itself. This confirms the conclusions of the scholarship on civil-military relations and shows that the argument applies to the development of the Disciplinary Barracks. In other words, the lack of public interest contributed to the lack of civilian oversight over the development of the Disciplinary Barracks as an institution.

Location issues aside, the Act included provisions for civilian oversight, stating that the rules and regulations of the prison would be determined by a five-member commission, three of which would be military officers and two would be civilians.¹¹⁷ Shindler states that this was done because “the committee deemed it best that the institution should not be inspected and managed exclusively by officers of the army, but that civilians, who may have an eye to humanity and reformation, who have devoted years of thought to the subject, perhaps more than army officers, should cooperate in the work.”¹¹⁸ This shows that the initial intentions of reforming the system were not only based on the functional problem of correcting army discipline, but by a humanitarian concern for the treatment of offenders. Thus, fulfilling both the functional and societal imperatives of the institution.

Despite this initial humanitarian and functional move for reform, as Sproat points out, liberal reform during this era was based on moderation and limited in scope.¹¹⁹ Because of the political and cultural factors previously discussed, the prison did not develop along the idealistic lines first intended. As Huntington argued, Congress was content to remain disengaged with military affairs during this period so long as the military did not exceed their budget.¹²⁰ Even after the location of the prison was moved to a site deemed acceptable by both parties, the budgetary problems indicative of civil-military

¹¹⁷ *An Act to Provide for the establishment of a military prison and for its Government*, 42nd Cong., 3rd sess.; *US Statutes at Large*, vol. 17, (3 March 1873), ch. 249, pp. 582-584.

¹¹⁸ Shindler, *History of the United States Military Prison*, p. 12-13.

¹¹⁹ Sproat, “*The Best Men*”, p. 9.

¹²⁰ Huntington, *The Soldier and the State*, p. 226.

relations of the era continued. Congress cut the funding of the governing board of the prison meaning there could be only three members.¹²¹ Therefore, the actual board merely consisted of three military officers and no civilians. The recollection of Zebulon Brockway, a prominent civilian penal reformer and intended member of the Disciplinary Barracks inspection board, on the subject further demonstrates the lack of civilian engagement with military matters during the period. In his autobiography, Brockway states that he was to be on the commission for the proposed military prison at Rock Island, Illinois, but this never came to be as a lack of congressional funds prevented the prison from being built.¹²² Brockway does not mention the fact that the military prison was in fact built, just at a different location. He just briefly states what his proposed involvement was supposed to be before funding was cut and then moves on to the position he held next. The fact that Brockway devoted so little attention to recording his proposed involvement in the project, even to the extent that he recorded incorrect information about the Disciplinary Barracks, shows that civilians, even prominent prison reformers like Brockway, fail to engage with military affairs during times of peace.

With civilian oversight removed from the prison, and a lack of public interest in military institutions due to the state of civil-military relations at the time, it is difficult to analyse whether the institution was successful during the initial period of development, 1876-1895. The available military sources including Shindler, Jones, and Price, provide a generally positive view of the development of the institution. Shindler offers little analysis of his own, however he does quote verbatim sections of annual reports from the commandants stating that progress in the prison was satisfactory during the period in question.¹²³ Furthermore, Jones' history, which borrowed heavily from Shindler, tells a similar story of the progressive development of military correctional methods in rehabilitating offenders. Jones states

¹²¹ Shindler, *History of the United States Military Prison*, p. 26.

¹²² Zebulon Brockway, *Fifty Years of Prison Service: An Autobiography*, (New York: Charities Publication Committee, 1912), p. 149.

¹²³ Shindler, *History of the United States Military Prison*, pp.31-39.

that during this early period “The advanced concepts of reformation and rehabilitation were gradually being developed at the military prison.¹²⁴” Major Price, Jones’ successor in the history of the institution, borrowed heavily from both his predecessors and tells the same story of progressive development of the reformation and rehabilitation programs. For example, the first vocational training program for offenders was started in 1877 in which the inmates were employed in making shoes for the army.¹²⁵ With little to no civilian oversight, and the available military sources being analysed by members or ex-members of the military, the facts are presented as mostly positive. It is more likely evidence of Henshel’s statement that “The philosophy is something to be learned; something to have ready for recitation; it is not something to interfere with the day-to-day workings of the facility.”¹²⁶

With the civil-military dichotomy of the nineteenth century in mind, an in-depth analysis of one of the first reports commissioned by the board demonstrates the issue with having a solely military institution of corrections. One of the first annual reports was conducted in 1878 and was a glowing review of the correctional methods employed and of the strict discipline adhered to within the institution. The report was commissioned by Secretary of War George McCrary in 1878 for the attention of the Senate Committee on Military Affairs and the inspection was carried out by General Randolph B. Marcy on 11 October 1878.¹²⁷ According to Marcy there were 373 convicts and two military prisoners incarcerated at the time of his inspection.¹²⁸ Marcy claims that under the prison’s governor, Asa Blunt, those inmates were being handled “efficiently” and without any breach of discipline, and without any illegal punishments having to be inflicted.¹²⁹ He further states that the inmates were given ample

¹²⁴ Jones, *USDB History*, p. 6.

¹²⁵ Price, *History of the United States Disciplinary Barracks*, p. 6.

¹²⁶ Henshel, ‘Military Correctional Objectives’, p 30.

¹²⁷ Senate Committee on Military Affairs, *Letter from the Secretary of War communicating a copy of a report of an inspection of the Military Prison at Fort Leavenworth, Kansas, and draft of Bill providing for the disbursement of earnings and proceeds of the labor of convicts in defraying the necessary expenses of the prison*, (Washington: Government Printing Office, 24 January 1879.

¹²⁸ *Ibid*, p. 2.

¹²⁹ *Ibid*.

opportunity to make formal complaints about conditions within the prison and chose not to do so.¹³⁰

Given Pope's negativity to the practice of allowing inmates unimpeded access to the inspecting officer this comment leaves much to be desired. As for the disciplinary methods, inmates were forbidden from talking except while under the direction of an officer or provost sergeant of the prison.¹³¹ The prison regulations stated that "prisoners shall be kept at hard labour daily."¹³² While the regulations on labour do not mention a specific punishment for refusing to work, it is implied by the disciplinary regulations that punishment would be confinement in solitary. This is the punishment set out for those inmates who refuse an order given by an officer or guard.¹³³ However, Marcy's report is problematic. The prison had only been active for three years when McCrary commissioned the report. But also, it is from the perspective of the military administration and it is only on Marcy's word that the prisoners had no complaints about the harsh discipline of military justice. However, it is reports such as these that provide the source material for the whiggish narratives of progress. While they provide a positive look at the running of the prison, they are only a snapshot of what went on at the prison. As previously mentioned, the inspection commission, however thorough their inspection might have been, they were only seeing a snapshot of the prison. It was the commandants and prison administration that were really in charge of the day to day running of the prison. As such, the positive aspects of the report must be read critically as they do not reveal all aspects of the prison, particularly the experience of the inmates.

Much of what Marcy says in his report is confirmed in several newspaper articles about the prison. Although there was no official civilian oversight of the Disciplinary Barracks, reporters from the *Leavenworth Times* would occasionally be allowed access to the prison and would report on what they saw. But it must be kept in mind that they would have seen even less of the day-to-day running of the

¹³⁰ Senate Committee on Military Affairs, *Inspection of the Military Prison*, p. 2.

¹³¹ *Ibid*, p. 12.

¹³² *Ibid*, p. 12.

¹³³ *Ibid*, p. 11.

facility than the commissioners. For example, on 8 July 1875 a *Times* reporter explored the prison and wrote that the governor does not treat the prisoners “with that harshness and severity that outsiders are often led to believe.”¹³⁴ Furthermore, another *Times* reporter visited the prison on 12 August 1875 and gave another positive review of the prison and treatment of the inmates, stating “The majority of the citizens of the West do not fare better than do the inmates of the United States Military Prison.”¹³⁵ Then again on 18 May 1876 *The Times* published another article on the prison in which the author stated that the conditions of the prison were “excellent” and that the regulations for the inmates were “mild and moderate.”¹³⁶ These articles seem to confirm the positive view of the prison espoused by Marcy’s report and by the military sources on the subject. From the outside, and selected images from the inside, the prison as a military institution appeared to be fulfilling both Huntington’s functional and societal imperatives.

What limited sources there are from inside the prison contradict this image, and hint towards what was revealed of the prison conditions during the First World War. As previously stated, sources from inside the prison during this period are scarce as professional soldiers tend not to be as motivated to write memoirs as civilian draftees. Yet there are enough sources to create a snapshot of what was going on which is confirmed in the next chapter by analysis of the First World War. The first example is a vague article in *The Leavenworth Weekly* from 22 July 1875 about the death of a military prisoner. According to the article, a prisoner named Richard O’Brien was beaten to death by a guard and the military authorities refused to let a civilian coroner into the prison, because the facility was under military jurisdiction.¹³⁷ Again, this highlights the issues of civil-military relations of the era which run as a

¹³⁴ ‘The Present Improvised Military Prison’, *The Leavenworth Weekly Times*, (8 July 1875), p. 3.

¹³⁵ ‘The Military Prison as it now stands and as it will be when completed’, *The Leavenworth Weekly Times*, (12 August 1875), p. 1.

¹³⁶ ‘Leavenworth Twenty-One Years Ago’, *The Leavenworth Weekly Times*, (18 May 1876), p. 1.

¹³⁷ ‘Death By Violence: Richard O’Brien, a Military Prisoner at Fort Leavenworth, Dies Suddenly’, *The Leavenworth Weekly Times*, (22 July 1875), p. 5.

common theme throughout the early history of Leavenworth. A prisoner was apparently beaten to death by a guard named Sergeant Hogan, but the lack of civilian oversight blocks any further analysis of the conditions under which he was killed. In addition to this, the only first-hand account from inside the prison during the pre-war period comes from notorious serial killer, Carl Panzram. In his memoir, which he wrote when he was on death-row at the civilian United States Penitentiary at Leavenworth, Panzram recounted briefly his experience at the Disciplinary Barracks. Panzram lied about his age to join the army. He refused to work, so he was brought before the company commander. The commander gave him a copy of the Articles of War, which Panzram desecrated. For such action, he was confined in the guardhouse until he was court-martialled. He tried to steal army overcoats, a civilian suit, and a pocketful of gold buttons, for which he was sentenced to three years at Leavenworth.¹³⁸ Panzram served 37 months, six of which he spent shackled to an iron ball and chain as punishment for misconduct. As the lowest tier prisoner, the hard labour of his sentence consisted of working in the quarry, and being fed on “stinking codfish, greasy stew or mouldy and wormy rice or beans.”¹³⁹ He goes on to say that “all that treatment did one good thing for me. The worse the food was and the harder they worked me, the stronger I got.”¹⁴⁰ Although the death of O’Brien and the recollections of Panzram are not conclusive evidence to contradict the previously mentioned positive view of the prison, they do offer a brief snapshot of life inside the prison. In a similar manner to civilian prisons at the time, the death of O’Brien hints at the cruelty of the guards which contradicts the rhetoric of rehabilitation and reform. The fact that the death was not investigated by civilian authorities further confirms the isolation of the facility and limited public interest. As for Panzram’s memoirs, his attitude betrays a sense of utter contempt for the reformatory goals of the prison, being subjected to the harshest punishments the system allowed for. Of course, Panzram was not a typical prisoner, as he went on to become a renowned serial killer

¹³⁸ Thomas E. Gaddis and James O. Long, *Panzram: A Journal of Murder*, (Los Angeles: Amok, 2002), p. 36.

¹³⁹ *Ibid*, p. 39.

¹⁴⁰ *Ibid*.

after he left the army. However, his memoir does reveal the focus on maintaining discipline over the rehabilitative goal stated in the rhetoric through the hard labour he had to engage in as well as the ball-and-chain punishment he had to endure for his infractions. While not enough to conclusively disprove the positive conclusions of the military sources, these two sources from inside the prison hint towards the fact that the rhetoric of rehabilitation did not necessarily line up with reality.

One event which contradicts the military story of progressiveness and success is the fact that Congress decided to close the prison down in 1895. While reinforcing the socio-economic and political arguments of the pressures of civil-military relations, this event also allowed civilian administrators to inspect the prison facilities. The military sources state that the Secretary of War begrudgingly admitted to Congress that the military could survive returning to the previous system of incarceration within multiple stockades.¹⁴¹ Price also states that the same arguments that were made in the past for the need to establish the prison in the first place were used to justify its closure. In the 1870s the reformers argued that first-time military offenders were being placed in close proximity to hardened and incorrigible ones.¹⁴² Then, this argument was used again to close the Disciplinary Barracks at Leavenworth, as certain Army officers argued that a similar environment existed within the new prison.¹⁴³ There were also economic reasons for the closure of the prison. Price states this, and Huntington's analysis of the era confirms the mood of Congress at the time. Military spending was low on the agenda, and the Disciplinary Barracks at Fort Leavenworth seemed like an unnecessary extravagance.

There were also political reasons for the closure. The failure of the legislation passed by Congress in 1891, known as the "Three Prisons Act" also provided the Department of Justice with

¹⁴¹ Price, *History of the USDB*, p. 11.

¹⁴² *Ibid*, p. 10.

¹⁴³ *Ibid*, p. 11.

another motive for seeking the closure of the Disciplinary Barracks.¹⁴⁴ The act established the first federal prison system by authorising the Department of Justice to purchase three sites on which to build new prisons. However, the act was a failure as it did not provide enough funds to do what was authorised. Therefore, it was in the Department's best interests to have the Disciplinary Barracks transferred to its control as it would be used as the first federal penitentiary. This again demonstrates the effect of civil-military relations on the development of the Disciplinary Barracks. Priority was mostly given to civilian projects over military ones.

Once the Department of Justice took control of the former Disciplinary Barracks at Leavenworth on 30 June 1895, civilian officials had their first look at the facilities and found them severely lacking. Although the new civilian governor of the prison, J.W. French, did not have an opportunity to witness the army's correctional methods in action, his damning report on the inadequate state of the facility reveals the different correctional standards of the civilian administration and the military. For example, the attorney general, based on the reports of Warden French, stated that "Besides, the buildings not having been constructed with a view to the confinement of desperate criminals, but only as a military prison, a much larger force of guards is required than would otherwise be necessary."¹⁴⁵ The report recommended that a brand-new facility be constructed elsewhere on the Fort Leavenworth reservation, and that the old Disciplinary Barracks be returned to the army.¹⁴⁶ The fact that the facilities did not meet the standards of the civilian Department of Justice demonstrates the isolation of the military from the public because the two spheres had such different views on the issue of corrections that were not always compatible. It also shows that the positive reports from the military sources without civilian

¹⁴⁴ *An Act for the Erection of United States Prisons and for the Imprisonment of United States Prisoners, and for other purposes*, 51st Cong., 1st sess; *US Statutes at Large*, vol. 26, (3 March 1891), ch. 529, pp. 839-840.

¹⁴⁵ J.W. French quoted in: Department of Justice, *Annual Report of the Attorney-General of the United States for the Year 1896*, (Washington: Government Printing Office, 1896), p. xxxii.

¹⁴⁶ Dep. of Justice, *Annual report of the Attorney-General*, p. xxxiii.

oversight do not necessarily tell the full story about the asserted success of the Disciplinary Barracks as a correctional facility.

Although the Disciplinary Barracks was founded on liberal principles and on the idea of cooperation between civilians and the military, the pressures of nineteenth century civil-military relations pushed its development towards a more isolated military path. The result was a system purely designed to deal with professional volunteer soldiers, and to maintain the discipline of the army. Because the system had little to no civilian oversight, and because the public was uninterested in military affairs during peace time, only small glimpses of the harsh methods can be seen. Most sources only take a superficial look at the institution and as such present a positive view of it based on the rhetoric of its founding. But what few sources there are from the inside of the prison are contradictory, and with no civilian oversight it is difficult to conclusively analyse whether or not the methods were successful. What can be argued however, is that the system that developed was one designed to maintain the discipline of professional soldiers through strict enforcement of the regulations. When the prison was returned to military control in 1906, this system was re-established. It was this system that came under immense pressure during the First World War civilian draft, which provided a more in depth look at the inside of the prison.

Chapter Three: Laymen in Leavenworth

When the United States entered the First World War, many civilians found themselves inducted into the ranks of the military, whether they wanted to be or not. This influx of both unwilling and inexperienced citizen-soldiers into the ranks of the military placed considerable strain on the military justice system, and on the correctional system which was developed over the previous thirty years. This chapter will assess the period of the First World War, looking at the strain placed on the correctional system by civilian draftees, and the conditions inmates were subjected to. This chapter will first explain the legislation which placed civilian draftees under military law and the problems which were caused by having so many civilians in military service. In order to analyse the problems with the military correctional system it will also be necessary to understand the issues with sentencing the guilty under a general court-martial proceeding. This chapter will then contrast the military sources' positive assessment of how the Disciplinary Barracks fared in such a difficult situation with the testimonials of conscientious objectors who experienced the most brutal elements of the system. The experiences of conscientious objectors brought the conditions of military incarceration into the public eye, which led to eventual reform of the system. The inner workings of the prison in contrast with the reported success of the correctional system reveals that there is an inherent contradiction in the military's rhetoric of rehabilitation, and a flaw in the military argument that improvement in military corrections has been the result of internal institutional growth. The result of pressures this period was limited pragmatic alignment which stopped when public interest faded.

It was the military's unfair sentencing system of general court-martial which first brought the military justice system to the attention of the public. Many men found themselves incarcerated at Leavenworth for trivial charges after receiving unfairly harsh sentences. Therefore, an understanding of the court-martial system and the attention it garnered is necessary in analysing issues with the

correctional system of the time. In 1919 the most vocal advocate for military justice reform, Samuel T. Ansell, was quoted in *The New York Times* as saying “The sentences imposed for slight offences by courts-martial have shocked every sense of justice. They have reached the heights of injustice. The sentences in many instances bore no reasonable relationship to the offenses committed.”¹⁴⁷ Ansell’s primary concern at the time was reforming the military court-martial system, and preventing alleged military offenders from entering the military correctional system in the first place. While the conditions of prisoners at Leavenworth and the various branches of the Disciplinary Barracks did get public attention during the war, the focus was on reforming the military justice system, not the military correctional system. Therefore, one must first understand the debates around the reform of the court-martial system in order to understand the experience of offenders who were incarcerated at Leavenworth.

Even though draftees during the First World War were not volunteers, they were still subject to military law. Legislation that was passed at the time removed their status as civilians and placed them under the jurisdiction of the military justice system. Firstly, the *Selective Service Act* 1917 gave the President the power to draft civilians into military service as required.¹⁴⁸ Then, Article 2 subparagraph (a) of the *Articles of War* 1916 placed said draftees under the jurisdiction of military law.¹⁴⁹ Because of this, the *Articles of War* in their entirety applied to civilian draftees, whether they had volunteered for service or not. Article 12 of the *Articles of War* 1916 gave general courts-martial the authority to sentence anyone under the authority of military law who violated the *Articles of War*.¹⁵⁰ In addition, Article 42 states that offenders when found guilty by a general court-martial cannot be sentenced to

¹⁴⁷ ‘Court-Martial Reform’, *The New York Times*, 15 February 1919, p. 10.

¹⁴⁸ *An Act to Authorize the President to Increase Temporarily the Military Establishment of the United States*, Public Law 12, 65th Cong., 1st sess., *US Statutes at Large*, Vol. 40, Part 1, (18 May 1917), p. 76.

¹⁴⁹ Article 2, ‘*Articles of War*’; in; *An Act Making Appropriations for the Support of the Army for the Fiscal Year Ending June Thirtieth, Nineteen Hundred and Seventeen, and for other purposes*, Public Law 242, 64th Cong., Sess 1, *US Statutes at Large*, Vol. 39, Part 1, (29 August 1916), p. 651.

¹⁵⁰ Article 12, ‘*Articles of War 1916*’, *US Statutes at Large*, Vol. 39, p. 652.

incarceration in a civilian penitentiary unless the law they broke has an equivalent within the civilian statutes.¹⁵¹ Most draftee offenders were convicted of trivial violations under the *Articles of War*, which did not have civilian equivalents meaning that a significant portion of them ended up serving their sentences in Leavenworth, or various Disciplinary Barracks branches around the country.

Even though they had not volunteered, newly inducted draftees who violated the *Articles of War* found themselves with very few rights when compared with civilian criminal proceedings. Court-martial proceedings were entirely within the purview of the executive branch of government, with no opportunity for judicial review of the trials by any civilian appellate court.¹⁵² This meant that if a soldier was accused of an offence under the *Articles of War* it was up to the convening authority to determine whether or not there was enough evidence to bring it to trial. If there was, the convening authority appointed between five and thirteen officers to sit in judgement over the accused and hear the evidence. A Judge Advocate was appointed by the court to act as the prosecution, and the defendant was given the choice between having a Judge Advocate appointed for the defence, or choosing civilian counsel at his own expense. Once a verdict was reached it was sent to the convening authority for review along with any sentencing decisions. All sentences were sent to the Office of the Judge Advocate General for final review, and then that was the end of it. The accused had no right to appeal the decision after the final review.

The court-martial system was designed for a professional army of volunteers, but with civilian inductees came complaints of constitutional rights violations. As military lawyer John Wills argues, “Claims of the denial of constitutional due process by courts-martial received little consideration from

¹⁵¹ Article 42, ‘*Articles of War 1916*’, *US Statutes at Large*, vol. 39, p. 657.

¹⁵² The 1857 Supreme Court case, *Dynes v. Hoover* held that the enumerated powers clause of the Constitution exempted courts-martial proceedings from federal appellate review. See Cpt John T. Willis, ‘The United States Court of Military Appeals: Its Origin, Operation and Future’, *Military Law Review*, vol. 55, (1972), p 46.

the federal courts in the nineteenth and early twentieth centuries.”¹⁵³ This changed during the war, as the combination of the *Selective Service Act* and the jurisdiction of the *Articles of War* meant that the United States Army increased from a small professional force of 30,000 men in 1916 to over four million by the end of the war.¹⁵⁴ In the past when vast numbers of civilians have been recruited into the military, discipline has suffered. Evidence of this can be found in the increased need for military police during these periods to guard the rear against the abuses of these undisciplined citizen soldiers.¹⁵⁵ The First World War was no exception, as shown by the need to resurrect the military police to enforce military law.¹⁵⁶ The significant increase in annual trials by general courts-martial during the war also demonstrates this. During the fiscal year ending in 1916, 4,743 personnel were tried by a general court-martial, whereas in the fiscal year ending 1919 that number increased to 16,547.¹⁵⁷ To account for this massive influx of military offenders, the staff of the Judge Advocate General’s Office was significantly increased from just 32 on 6 April 1917 to 373 on 30 June 1919.¹⁵⁸ These statistics demonstrate the considerable strain that was placed on the military justice system by the recruitment of so many civilians. The inevitable result of the increased number of courts-martial was an increased population in the Fort Leavenworth Disciplinary Barracks and its branches at Fort Jay and Alcatraz. Before the United States joined the war the prison population of Fort Leavenworth was 951.¹⁵⁹ By war’s end in 1919 that population had increased to 3,703, more than double the maximum capacity of the prison.¹⁶⁰ The need for a dedicated military police corps, the increase in Judge Advocate staff, the significant increase in trials by general courts-martial, and the substantial increase in prisoner population at Fort Leavenworth

¹⁵³ Willis, ‘The US Military Court of Appeals’, p. 46.

¹⁵⁴ Table 47 in; *The Army Almanac: A Book of Facts Concerning the Army of the United States*, (Washington D.C.: United States Government Printing Office, 1950), p. 411.

¹⁵⁵ For a history of the United States military police see Robert K. Wright Jr., *Army Lineage Series: Military Police*, (Washington D.C.: Centre of Military History: United States Army, 1992), pp. 3-13.

¹⁵⁶ Knight, *Military Police*, pp. 7-10.

¹⁵⁷ Table 111 in; *The Army Almanac*, p. 746.

¹⁵⁸ Table 111 in; *The Army Almanac*, p. 745.

¹⁵⁹ Price, *History of the USDB*, p. 55.

¹⁶⁰ *Ibid.*

all demonstrate the strain that was placed on the military justice system by the enlistment of so many civilians into the army.

The increase in trials by court-martial revealed a serious issue with military sentencing. The harsh wartime sentences demonstrate the first sign of a divide between the stated goals of military corrections and the reality.¹⁶¹ Sentences could, however, be reduced by the convening authority, but according to John Willis, officers sitting on court-martial panels at the time were advised to impose the maximum sentences after delivering a guilty verdict, and let the commanding officer reduce it later if they chose to do so.¹⁶² The backlog of prisoners created by this system was so pronounced that Edmund Morgan, a lawyer appointed to the Clemency Committee for the Office of the Judge Advocate General after the war, claimed that his committee reduced 18,000 years-worth of prison time from convicted soldiers who had unfairly received the maximum possible sentence for trivial infractions.¹⁶³ It was not just the increase in prisoner population that demonstrates the contradiction of the stated purpose of the Disciplinary Barracks, but also the excessive nature of sentencing the guilty after a general court-martial.

The length and nature of sentencing demonstrates that the goal of military corrections was primarily deterrence. Many of the accused were dishonourably discharged in addition to receiving exceedingly long sentences of incarceration. Charges of desertion and absence without leave were treated with particular harshness, which is likely due to the original purpose of military corrections. A few select examples demonstrate both the harshness of sentencing under general courts-martial, and how such sentences represent the conflicting goals of military corrections. On 10 April 1918, Nicholas Ungar was sentenced to twenty-five years hard labour at Fort Leavenworth after being found guilty of

¹⁶¹ Henshel, 'Military Correctional Objectives', p. 33.

¹⁶² Willis, 'The US Military Court of Appeals', pp. 41-42.

¹⁶³ *Ibid*, p. 55 ft. 73.

draft evasion and refusal to obey orders.¹⁶⁴ Another example is a soldier named Private Charles E. Beldridge who was charged with desertion and sentenced to five years hard labour in Fort Leavenworth, despite the military record showing he was “mentally defective and imbecile.”¹⁶⁵ Another soldier named Private Clyde M. Ward was charged with desertion and loss of government property and was sentenced to ten years hard labour in Fort Leavenworth, with the record showing he was suffering from pulmonary tuberculosis.¹⁶⁶ Willard Centlivre was a leper who experienced fatigue and was told by army doctors that hard work was the only cure. He deserted and was captured at home. He was found guilty of desertion and sentenced to twenty-five years hard labour, being told that hard labour was the only cure for his condition.¹⁶⁷ It was not just deserters and draft dodgers who were treated harshly, offenders who committed what were trivial offences during peacetime found that these were quite serious during wartime. No matter how serious the offence, the sentences often contradicted the stated purpose of the Disciplinary Barracks. Private Vincent Porr of the 16th Infantry, was sentenced to death for falling asleep at his post as a sentinel, although his sentence was later commuted by the President to dishonourable discharge and three years hard labour at Fort Leavenworth.¹⁶⁸ Someone who has been dishonourably discharged, or executed for that matter, cannot be restored to active duty, showing the deterrent rather than rehabilitative nature of excessive sentences. There were many such instances of drafted civilians who were given excessive sentences for minor infractions under the *Articles of War*.

The war also generated another type of military offender; the conscientious objector. These men were subjected to the harshest elements of military justice. For example, Charles Mohr was

¹⁶⁴ ‘Ungar, St. Paul Slacker, Given 25-year Sentence’, *The Bemidji Daily Pioneer*, (Minnesota: 10 April 1918), p. 1.

¹⁶⁵ ‘Courts-Martial: The American Style Excessive Sentences Arouse Hostility. “Prussianism” Alleged’, *Otago Daily Times*, 15 July 1919.

¹⁶⁶ ‘Courts-Martial: The American Style Excessive Sentences Arouse Hostility. “Prussianism” Alleged’, *Otago Daily Times*, 15 July 1919.

¹⁶⁷ ‘Leper Alleges He Suffered in Army’, *Evening Star*, (Washington D.C., 27 March 1920), p. 2.

¹⁶⁸ ‘Wilson Saves Three From Firing Squad’, *The Daily Ardmoreite*, (Oklahoma: 22 September 1918), p. 13.

sentenced to fifteen years hard labour at Fort Leavenworth for refusing to wear a military uniform.¹⁶⁹ Another example is six Swedish socialists, Gunnard Johnson, Carl W. Johnson, Axel Carlson, Richard A. Carlson, Morris Kamman, and William Tresler, who were sentenced to twenty-five years hard labour at Leavenworth for refusing to obey military orders.¹⁷⁰ According to the article that reported their sentence, the brothers had fled Sweden in order to avoid military service.¹⁷¹ Another objector, Charles Clodi, was sentenced to twenty years' hard labour at Leavenworth for refusing to sign the muster, do any work or obey any military orders.¹⁷² Howard W. Moore, who went on to record his experience of incarceration in his autobiography, was sentenced to five years hard labour at Fort Leavenworth.¹⁷³ The excessiveness of these sentences demonstrates the contradiction between the rhetoric of military corrections and the reality. As previously discussed, the primary stated goal of military corrections was rehabilitation, or to 'restore men to the colours.' Failing restoration, the goal was to prepare offenders for a productive civilian career. However, the excessive sentencing and brutal conditions of the prison show that deterrence was more likely the unstated goal of military corrections during the war. Regardless of the reasons for this change, what is clear is that the unfairness of court-martial sentencing brought the military justice system to the public's attention.

The sheer number of excessive and unfair sentences brought the issue to the attention of the public. When the war was over the Secretary of War, Newton D. Baker, wrote a letter to the Judge Advocate General, Enoch H. Crowder, asking him to address the allegations of certain members of Congress as well as several prominent newspapers, that the United States system of military justice was flawed. He opened his letter by claiming that "During the times of peace, prior to the war, I do not recall

¹⁶⁹ 'Objector Gests 15 Years', *The Sun*, (New York: 27 October 1918), p. 4.

¹⁷⁰ 'Six St. Paul Socialists Draw 25 Years Under Martial Law', *Courier Democrat*, (North Dakota: 13 June 1918), p. 2.

¹⁷¹ 'Six Socialists are Sentenced to Terms of 25 Years in Prison', *The Daily Ardmoreite*, (Oklahoma: 10 June 1918), p. 3.

¹⁷² 'Camp Upton Soldier Who Disobeyed Gets 20-year Term', *New-York Tribune*, (New York: 3 August 1918), p. 4.

¹⁷³ Howard W. Moore, *Plowing My Own Furrow*, (New York: W.W. Norton, 1985), p. 129.

that our system of military law ever became the subject of public attack on the ground of its structural defects.”¹⁷⁴ As the previous chapter has shown, Baker’s assertion was correct, that public interest in military justice was significantly reduced during periods when civilians were not forced to serve in the military. The only time Congress became noticeably interested in the United States Disciplinary Barracks was when money was involved, or when they needed the facility for civilian purposes. The event known as the “Crowder-Ansell dispute” was the primary factor in drawing public attention to the court-martial issue. Major General Crowder was the Judge Advocate General for the duration of the First World War, but because of various other duties demanding his attention he delegated many of his duties to Brigadier General Samuel T. Ansell, who became acting Judge Advocate General.¹⁷⁵ Ansell had a slightly different interpretation of the statutes than Crowder and believed that the Judge Advocate General not only had the authority to review the sentences of all general courts-martial proceedings, but also to amend the sentence of a general court-martial if he believed it to be too excessive. General Ansell argued that under Section 1199 of the 1878 statutes the Judge Advocate General had the authority to alter or even set aside a sentence passed by a court martial, based on the words “review and revise.”¹⁷⁶ Ansell reduced several sentences on this argument until Crowder confronted him and removed from his position as acting Judge Advocate General, after which Crowder promised to devote more of his time to the role. Ansell made this dispute public, and the result was a public campaign for the reform of the court-martial system. Ansell argued that some form of civilian appeals process was necessary in order to protect the rights of those being tried and sentenced. However, this public campaign was based on the rights of the accused in appealing excessive sentencing rather than the specific conditions within

¹⁷⁴ Newton D. Baker, *Military Justice During the War: A Letter from the Judge Advocate General of the Army to the Secretary of War in Reply to a Request for Information*, (Washington: Government Printing Office, 1 March 1919).

¹⁷⁵ Col. Frederick Bernays Wiener, ‘The Seamy Side of the World War I Court-Martial Controversy’, *Military Law Review*, vol. 129, (1989), pp.110-112.

¹⁷⁶ Major Terry W. Brown, ‘The Crowder-Ansell Dispute: The Emergence of General Samuel T. Ansell’, *Military Law Review*, vol. 35, (1967), p. 4.

military prisons. The issue with sentencing under general courts-martial during the First World War demonstrates the contradiction between the rhetoric of military corrections and the reality. However, it does not reveal much about issues with military corrections itself once the sentence has been passed down.

With so many military offenders sentenced to hard labour at Leavenworth, the facility was put under a significant strain. This strain both revealed flaws within the system and brought those flaws to the attention of the public. An analysis of the institutional histories of the prison written by members of the military in contrast with newspaper articles and accounts from conscientious objectors present a fairly accurate impression of the realities of the prison. The progress narratives written on the Disciplinary Barracks only mention the civilian aspect of the First World War very briefly, spending more time focusing on the rehabilitative programs being run at the prison. Jones and Price both state that during the First World War “disciplinary problems increased accordingly.”¹⁷⁷ However, Jones argues that the army was in the best possible position in its history to deal with military offenders due to the opening of branches of the United States Disciplinary Barracks on the East Coast and West Coast, as well as the condition of the parent facility at Fort Leavenworth.¹⁷⁸ Price states that in early 1917 vocational activities within the prison experienced a significant growth due to increased financial aid from Congress.¹⁷⁹ The legacy of Barr’s reforms was the belief that work and hard labour were the best and only forms of rehabilitation. As such, the vocational programs are seen by Jones and Price as progressive steps towards the institution that exists today. Jones, Price, and Youngs all state that the prisoners were expected to “earn their keep”, reaffirming the idea that hard labour was not only the best form of

¹⁷⁷ All three sources appear to be quoting Jones verbatim, although they do not reference him; Jones, *USDB History*, p.13; Price, *History of the United States Disciplinary Barracks, 1875-Present*, p. 24; Youngs, ‘A History of US Army Corrections’, p. 27.

¹⁷⁸ Jones, *USDB History*, p. 13.

¹⁷⁹ Price, *History of the United States Disciplinary Barracks*, p. 24.

rehabilitation, but also the best way to create an institution that could support itself.¹⁸⁰ According to Price, the farm colony became more productive than in previous years and the various vocational activities reached the point at which they could contribute to the financial upkeep of the prison. For example, new machinery was added to the shoe repair shop increasing its capacity to 500 pairs per day, and also to allow the production of both military and civilian clothing.¹⁸¹ Price also states that by 1917 the work of the Department of Psychiatry and Sociology became accepted within the prison, and the practices still in use as late as the 1970s were developed during this period.¹⁸² The psychiatry program will be discussed in more detail in the next chapter. Jones and Price make it clear that the vocational programs were successful based on their expansion and monetary return. The sources imply in talking up the success of the vocational programs that the rehabilitative ethic was alive and well at Leavenworth.

In addition to the vocational programs, Jones states that three “progressive firsts” in military penology took place at Fort Leavenworth in 1919. He states that the first Clemency Board was established to review every single case tried by a general court-martial and that in five months the Board had acted upon 3,360 cases, restoring 941 prisoners to duty, and remitting the sentences of a further 1,412.¹⁸³ However, as previously stated in this chapter, the Clemency Board that Jones mentions was actually the result of civilian pressures from outside, instigated by Ansell’s public debate with Crowder in the newspapers over the rights of the accused in general court-martial proceedings. So, the Clemency Board was not a “progressive first” in military penology as Jones suggests, but rather an

¹⁸⁰ Both Price and Youngs appear to be borrowing Jones’ phrase here, as they both state “earning their keep” word for word: Jones, *USDB History*, p. 10; Price, *History of the United States Disciplinary Barracks*, p. 15; Youngs, ‘A History of US Army Corrections’, p. 19.

¹⁸¹ Price, *History of the United States Disciplinary Barracks, 1875-Present*, p. 25.

¹⁸² Price, *History of the United States Disciplinary Barracks, 1875-Present*, p. 27; Maj James J. Gibbs, ‘The Role of the Psychiatrist in Military Justice, *Military Law Review*, vol. 7, (1960), pp. 51-59.

¹⁸³ Jones, *USDB History*, p. 19.

example of pragmatic alignment as the result of external pressures being forced upon the military system.

Price also claims that as a “progressive first” the prison administration set up the General Prisoner’s Conference Committee on 10 June 1919 in order to better facilitate cooperation between the administration and the prisoner population for the betterment of conditions. Both Jones and Price make the same claim, that the prisoner’s committee was a progressive step taken by the administration. However, according to Jones and Price the committee was a failure and was abolished due to the “attempted usurpation of the institution.”¹⁸⁴ The military sources leave out an important factor that initiated the prisoner’s committee in the first place. In February of 1919, the majority of prisoners at Fort Leavenworth initiated a general strike to protest the conditions of the prison. The conscientious objectors Howard W. Moore and Roderick Seidenberg provide more details of the strike in their autobiographies. According to Seidenberg, the February strike was preceded by a riot on Christmas Eve 1918. Seidenberg writes that the cause of the riot was the fact that the inmates all “...smarted under the terrific sentences which were the common fate...full of resentment at the brutalities of the guards and the merciless work they were forced to do.”¹⁸⁵ Moore says much the same about the causes of the riot:

But the prison was smoldering with greater complaints, chief of which was the length and inequality of the sentences the inmates were serving...Smaller grievances about food and working conditions, the tyranny of the guards, censorship and delay of mail, etc., were magnified by the overwhelming sense of unfair and arbitrary punishment.¹⁸⁶

¹⁸⁴ Price, *History of the United States Disciplinary Barracks*, p. 28.

¹⁸⁵ Roderick Seidenberg, *I Refuse to Serve*, 1932. In *American Lives*, Edit. Robert F. Sayre, (Madison: University of Wisconsin, 1994) p. 511.

¹⁸⁶ Moore, *Plowing My Own Furrow*, p. 141.

This contradicts the image presented by the military sources of a progressive correctional facility working to rehabilitate military offenders who had lost their way. According to Moore and Seidenberg, conditions were brutal and not at all conducive to rehabilitation.

This general attitude of the prisoners continued into the New Year and culminated in the general strike of February 1919. The reporter, Winthrop D. Lane, happened to be visiting the prison at the time of the February strike and corroborated much of what Moore and Seidenberg state in their accounts. According to Lane, over 2,300 of the prisoners at Fort Leavenworth were involved in the non-violent sit-down strike, led by the approximately 300 conscientious objectors.¹⁸⁷ The situation became heated and nearly escalated into extreme violence as the commandant of the prison, Colonel Sedgewick Rice, was preparing to call the troops in to put down the riot by force. However, Rice himself had agreed that the conditions of the prisoners were quite poor and that it was useless to keep minor offenders behind bars who were only there because their crimes had been committed during wartime. Because of this, Rice agreed to negotiate with the leaders of the riot and the situation was resolved peacefully. Rice agreed to bring the soldiers' case to Washington so that Congress could look into commuting their sentences. The commandant also agreed to set up a permanent grievance committee so that inmates could have their complaints heard.¹⁸⁸

Moore and Seidenberg briefly mention the event which the military sources called the "attempted usurpation of military control" which led to the abolition of the grievance council. Six months after the initial strike there was a second strike and this one was put down with violence. Seidenberg states that "Six months later the conscientious objectors who still remained were suddenly transferred...and six days later a second strike broke out. It was crushed with bullets, and Leavenworth

¹⁸⁷ Winthrop D. Lane, 'The Strike of 2,300 Prisoners at Fort Leavenworth', *The New York Tribune*, (New York: 16 February 1919), pp. 5-6.

¹⁸⁸ Moore, *Plowing My Own Furrow*, pp. 141-142.

returned once more to the peaceful days of iron discipline.”¹⁸⁹ Moore also briefly mentions this second strike, stating “The following July, after most of the [conscientious objectors] were gone, a tragic sequel took place: a “mutiny” which seemed to have been instigated by the authorities was put down brutally with the loss of six lives, and “iron rule” returned to Leavenworth with a vengeance.”¹⁹⁰ Except for the military sources, Seidenberg and Moore’s brief mention are the only sources on the strike, neither of whom were present. Unfortunately, neither Moore nor Seidenberg give their sources for the strike or say how they heard about it. Unlike the first strike in February, there are no newspaper articles on the second strike. What is clear from this is that the prisoners’ grievance committee was not a progressive first instituted by prison authorities, but rather a compromise forced on them by civil disobedience from within the prison. The fact that the committee was abolished at the first opportunity further reinforces the fact that it was a forced measure, in response to internal pressure.

The contradiction between the military sources and other sources calls for a more in-depth look at prison conditions preceding the strike and how they contradict the rhetoric of rehabilitation. Accounts from inside the Disciplinary Barracks are sparse in any era as there are military censors in place preventing news from reaching the outside world. According to Plotkin, modern practice at the Disciplinary Barracks is that all letters are examined, with any letters with the words ‘political prisoner’ being automatically censored.¹⁹¹ In the 1970s one prisoner was sent to solitary confinement for sending “contraband” letters to his attorney.¹⁹² Also, prisoners are never allowed to speak to the media under any circumstances.¹⁹³ However, during the First World War many of the conscientious objectors incarcerated at the Disciplinary Barracks managed to smuggle information about their experiences to the outside world. The conscientious objectors set up a secret network within the prison for smuggling

¹⁸⁹ Seidenberg, *I Refuse to Serve*, p.512.

¹⁹⁰ Moore, *Plowing My Own Furrow*, p. 142.

¹⁹¹ Plotkin, ‘The Unknown Soldiers’, p 606.

¹⁹² *Ibid.*

¹⁹³ *Ibid*, p 607.

information to the outside world. “Kite” was the codename for an underground letter, smuggled from prisoner to prisoner and then eventually added to the executive mail pile. Seidenberg once used this system to send a sketch of a prisoner in solitary confinement via underground channels to New York.¹⁹⁴ At other times their letters were entrusted to a friendly guard to deliver outside the walls.¹⁹⁵ The primary operator of the kite network at Leavenworth was a conscientious objector named Clark Getts, who was serving twenty five years hard labour for refusing to perform the duties of a soldier.¹⁹⁶ While at Leavenworth he worked in the statistics department, which gave him free access to much of the prison.¹⁹⁷ When the conscientious objectors were forced into the showers, Getts would secretly join them as the steam and large number of persons made it difficult for the guards to keep track of how many prisoners were in the room. In this environment Getts would obtain the address of a loved one, and collect letters to “kite over the wall”, and share rumours of the outside world with his fellow objectors.¹⁹⁸

The accounts of conscientious objectors provide a detailed view of conditions within the prison. Objectors such as Moore and Seidenberg went on to write of their experiences within the military correctional system during the First World War. The Hutterite Hofer brothers also recorded some of their experiences in various journal entries and letters home to their parents. The Hofer brothers were religious objectors who refused to serve in the military on religious grounds and were eventually sentenced to hard labour at Fort Leavenworth. Unfortunately, the brothers died of pneumonia in 1918. Their accounts of their treatment at the hands of the guards survive through their journals and letters home, which have been compiled by Duane Stoltzfus, in his book *Pacifists in Chains*.¹⁹⁹ Moore recorded

¹⁹⁴ Seidenberg, *I Refuse to Serve*, p. 510.

¹⁹⁵ *Ibid.*

¹⁹⁶ ‘Gets Eighteen Years’, *Richmond Times Dispatch*, (Richmond: 8 September 1918), p. 7.

¹⁹⁷ Seidenberg, *I Refuse to Serve*, p. 510

¹⁹⁸ *Ibid.*

¹⁹⁹ Duane C.S. Stoltzfus, *Pacifists in Chains: The Persecution of the Hutterites During the Great War*, (Baltimore: John Hopkins University Press, 2013).

his experiences years later in his autobiography, *Ploughing my Own Furrow*. Moore was an absolutist objector who refused non-combatant service based on his pacifist beliefs and then refused to work in the prison as required as he believed that even prison labour contributed to the war effort. Seidenberg was another absolutist conscientious objector who shared Moore's beliefs and experiences at Leavenworth. Many of the conscientious objectors incarcerated at Leavenworth were absolutists who refused to partake in non-combatant work on the grounds that it still supported the war effort. The *Selective Service Act* 1917 provided an alternative for 'legitimate objectors' by offering them non-combatant service as orderlies, stretcher bearers, or some similar role.²⁰⁰ While many 'legitimate' objectors were offered non-combatant roles to appease their beliefs, the absolutists refused to contribute in any way to the war effort. Many of these men were politically minded enough to record their experiences and their memoirs provide an image of the harsh realities of the military correctional system. Three elements of the prison experience are clear from these sources which demonstrate the contradiction of the rehabilitation rhetoric. These are the brutality of the guards, the harshness of solitary confinement, and the general atmosphere of the prison itself.

The fact that the brutality of prison guards often frustrates rehabilitation is not a new observation, and the Disciplinary Barracks during the First World War was no exception.²⁰¹ The brutality of prison guards within the United States military is well documented, and demonstrates the contradiction between rhetoric and prison practice. Even in the holding areas, certain military police officers had a reputation for torture and cruelty in order to coerce confessions out of arrested soldiers. One such example is that of Captain Karl W. Detzer of the 308th Military Police Company who was court-martialled for mistreating American prisoners at a processing station in Le Mans, France, where he

²⁰⁰ *An Act to Authorize the President to Increase Temporarily the Military Establishment of the United States* Public Law 12, 65th Cong., 1st sess; *US Statutes at Large*, Vol. 40, Part 1, (18 May 1917), Ch. 15, pp. 76-84.

²⁰¹ Richard G. Singer, 'Prison Conditions: An Unconstitutional Roadblock to Rehabilitation', *Catholic University Law Review*, vol. 20, Issue 3 (1971), pp.365-393.

tortured those soldiers accused of infractions under the *Articles of War* in order to get confessions out of them.²⁰² Guard brutality also continued within the Disciplinary Barracks itself, as shown by David Hofer's account of how he and his fellow objectors were treated when they first arrived at the Disciplinary Barracks in 1918. In the account, Hofer claims that the guards forced the newly arrived prisoners to march up a hill from the train to the prison at the point of bayonets, then forced the prisoners to stand in the freezing cold for two hours until they were finally ushered to their cells.²⁰³ However, Stoltzfus states that Hofer's report is contradicted by a report from the commandant of the Disciplinary Barracks, Sedgewick Rice, who stated that the prisoners were not made to stand in the cold for anywhere near the two hours claimed.²⁰⁴ Furthermore, Colonel Rice stated that guards at Leavenworth carried handguns, not rifles, making the bayonet story highly unlikely.²⁰⁵ But the fact that guards used bayonets is also repeated by other sources talking about other institutions. Moore states that at Camp Funston a group of political objectors were constantly harassed by the guards, being forced around the parade ground "at the point of a bayonet."²⁰⁶ There is also evidence of Disciplinary Barracks guards carrying shotguns, as shown by an attempted escape from the Governor's Island branch of the prison in 1929 in which an inmate, Private Keefer, wrestled a shotgun from a guard and tried to escape.²⁰⁷ While a shotgun is not a rifle, it is certainly not a pistol, showing a discrepancy in Rice's claims. Regardless of these conflicting reports, Hofer's account demonstrates the perceived cruelty of the military guards at Leavenworth.

Bayonets aside, the brutal actions of the guards are further corroborated by the testimonies of Moore and Seidenberg. In his autobiography, Moore gives an account of how the guards at Leavenworth

²⁰² 'Capt. Detzer Faces Cruelty Charges', *The New York Times*, (New York: 10 December 1919), p. 5.

²⁰³ David Hofer, Journal Extract, 1918. in *Pacifists in Chains*, p. 159.

²⁰⁴ Stoltzfus, *Pacifists in Chains*, pp. 161-162.

²⁰⁵ *Ibid*, p. 162.

²⁰⁶ Moore, *Plowing My Own Furrow*, p. 127.

²⁰⁷ 'Army Rebel Livens Soldier's Rainy Day', *The New York Times*, (New York: 19 December 1929), p. 17.

constantly harassed a group of Molokan Christian pacifists by dragging them across the prison yard by their beards, forcing them to stand at attention for hours, and then clubbed them whenever they slumped or leaned against the wall.²⁰⁸ Moore also writes that at roll call every day, prisoners were forced to stand at attention in a military fashion while an officer counted them. One day during this counting, Moore was exhausted from his treatment in solitary confinement and so he slumped down and laid on the floor. The officer was so enraged by this that he lost his count and had to start again, warning Moore that there would be serious consequences if it happened again. Moore again laid down on the floor, refusing to stand at attention so the officer had him severely beaten by two other guards. Moore awoke several hours later with his head being cradled in the lap of another guard who muttered, "Jesus, if he can stand this, he'll win."²⁰⁹ Another example Moore gives is that after spending two weeks in solitary confinement he was allowed to have a regular diet again. His first meal was a plate of soupy beans, which the guard shoved under the cell gate and then spat into it.²¹⁰ Seidenberg tells another story of one inmate in the psychiatric wing who had a deformed foot who should have been exempted from the draft, but was inducted anyway, eventually being charged with insubordination and sent to Fort Leavenworth. Seidenberg states that the guards delighted in making fun of him and telling him that he would be discharged any day now.²¹¹ Another inmate in the psychiatric ward planned to escape in a packing crate. The guards found out about it and allowed him to believe it would succeed. They wheeled him to the railroad station and left him there for a few hours, then took the crate into the executive's office and opened it there.²¹² These instances demonstrate the brutality and impatience of the guards through their actions towards the prisoners. Seidenberg further states that the guards had never encountered the level of resistance shown by the conscientious objectors among previous inmates,

²⁰⁸ Moore, *Plowing My Own Furrow*, p. 130.

²⁰⁹ *Ibid*, p. 131.

²¹⁰ *Ibid*, p. 133.

²¹¹ Seidenberg, *I Refuse to Serve*, p. 507.

²¹² *Ibid*.

attributing their brutality to frustration.²¹³ Despite the cause of their frustration, the brutality of the guards did not create an environment conducive to rehabilitation.

The guards also had legitimate punishments at their disposal to inflict on inmates. Once the objectors were processed and became official inmates of the prison they were ordered to work with the rest of the prisoners. However, the absolutist objectors who found themselves incarcerated at Leavenworth were those who had refused non-combatant service on the grounds that it was still contributing to the war effort and therefore contrary to their pacifist beliefs. On the same grounds, most absolutist objectors refused to work and were punished with the harshest measure at the disposal of the guards; solitary confinement. Moore arrived at Leavenworth on Armistice Day and was immediately placed in solitary confinement for refusing to work.²¹⁴ Moore writes that during his time in solitary he was chained in the standing position for nine hours a day.²¹⁵ He was kept on a diet of bread and water, and shared his cell with numerous swarms of bedbugs and rats.²¹⁶ Seidenberg was treated much the same as Moore in solitary, including being manacled and given a limited diet.

The punishments for not working were so harsh because they had worked in the past, when the recipients were volunteers. However, they were inflicted upon soldiers who had a very different concept of duty and discipline. Conscientious objectors had such strong political and spiritual convictions that they were willing to put up with such treatment for as long as was necessary to make their point. The severity of the punishment did not factor into their world view; the only thing that mattered to them was the act of defiance. This challenged the entire system of military corrections at the time, revealing a flaw in the harsh punishments.

²¹³ Seidenberg, *I Refuse to Serve*, p. 512.

²¹⁴ Moore, *Plowing My Own Furrow*, p. 130.

²¹⁵ *Ibid.*

²¹⁶ *Ibid*, p. 131.

It was the atmosphere of the prison, as well as the brutal policies themselves, which further demonstrates the deterrent nature of military corrections. This was due to a combination of overcrowding of the facility and the previous factors already mentioned. The result was a hostile and violent atmosphere which was not conducive to rehabilitation. Seidenberg, for example, states that

At Leavenworth, I soon learned, one helped the war even while resisting it. The Barracks constituted a kind of power station sending forth currents of fear, a prison with unseen dynamos that created tension and dread throughout the army.²¹⁷

Here, Seidenberg is saying that the prison relies on a reputation of fear based on brutality to deter members of the military from committing acts which would send them there. Moore also refers to the prison as a “... forbidding mass of steel and concrete.”²¹⁸ Until it was demolished in 2006, the original structure of the Disciplinary Barracks was nicknamed “The Castle” due to its foreboding dome centre. This shows that the physical structure of the prison itself represented a fearful image in the minds of those it is meant to deter, in a manner similar to that of the Eastern State Penitentiary.²¹⁹ In other words, this was a place to be avoided, not a place to better one’s self.

The internal structures of the prison had the same effect in creating a fearful deterrent. Moore states that the prison administrators intentionally created a culture of fear within the prison itself in order to coerce inmates into conformity.²²⁰ He argues that part of this mechanism was the utilization of other more violent offenders to make less violent ones more pliable. One instance of this was when Moore was chained in the standing position in his solitary cell, and the door was left open. A soldier serving a life sentence for murdering his paymaster in France, identified only as ‘Red’, came into

²¹⁷ Seidenberg, *I Refuse to Serve*, p. 505.

²¹⁸ Moore, *Plowing My Own Furrow*, p. 130.

²¹⁹ Francis X. Dolan, *Eastern State Penitentiary*, (Chicago: Arcadia Publishing, 2007) p. 11.

²²⁰ Moore, *Plowing My Own Furrow*, p. 135.

Moore's cell and put his cigarette out on Moore's hand. For Moore, this was another part of the whole system of military incarceration.²²¹ The observations of Moore and Sedienburg about the nature of the prison environment further reinforce the fear element of Leavenworth. It was meant to be a fearful place so that soldiers were deterred from committing acts that would send them there.

When word of the brutal prison practices inflicted on conscientious objectors reached the public, eventually some of those practices were abolished. This was largely due to organisations such as the People's Freedom Union, the American Union Against Militarism, Fellowship of Reconciliation, and the National Civil Liberties Bureau. All four organisations provided various legal services and advice to conscientious objectors and helped spread awareness of their stories to the public. For example, on Christmas Day 1919 the People's Freedom Union planned a march of 2,000 people in protest of "political prisoners" being held by the government.²²² Police broke up the strike, but the People's Freedom Union planned to march on the Whitehouse and present a plea for amnesty to the President.²²³ While this does not prove how widespread public engagement with the brutalities of the Disciplinary Barracks was, it does show that several prominent groups were trying to educate the public about those conditions. When combined with the public outcry over the court-martial system this does show a degree of public engagement with the conditions of military prisons. Furthermore, this is shown by a speech given by Charles H. Dillon before the House Committee for Military Affairs in which he presented several examples of the brutalities conscientious objectors faced under the military correctional system.²²⁴ Moore also states that he smuggled out his account of the Hutterites which appeared in Norman Thomas's magazine, *The World Tomorrow*, bringing more public attention to the situation.²²⁵ Both

²²¹ Moore, *Plowing My Own Furrow*, pp 134-136.

²²² 'March in Manacles, Plan of Radicals', *The New York Times*, (New York: 16 December 1919), p. 17.

²²³ 'To Carry Amnesty Plea to President', *The New York Times*, (New York: 20 January 1920), p. 6.

²²⁴ Charles H. Dillon, 'Introducing Examples of Brutalities, Tortures, and Deaths to Political Prisoners under Military Regime', (speech, Washington; Government Printing Office, 1919)

²²⁵ Moore, *Plowing My Own Furrow*, p. 133.

Moore and Seidenberg comment on the effects of the public campaign on behalf of the conscientious objectors. After 31 days in solitary Moore was told that Secretary of War Baker had banned the practice of manacling non-compliant prisoners to the wall as a punishment.²²⁶ Seidenberg further states Baker's decision to ban manacling was due to the pleadings of Fanny Villard, a prominent pacifist and suffragette.²²⁷ This further demonstrates that military prison reform towards pragmatic alignment resulted more from external pressures generated by the interrelation between the civilian and military spheres, rather than from isolated internal reform movements.

The whole system of military justice experienced a significant shock during the First World War. The system that had been developed over the previous thirty years was ill-equipped to deal with so many civilian offenders. Reform came from external pressure rather than from internal reflection as the progress narratives suggest. The practice of manacling was banned and many of the excessive wartime sentences were reduced by the Clemency Committee after the war. The massive number of incarcerated men brought public attention to the state of military justice as a separate system. This acted as a turning point towards greater pragmatic alignment, creating a system that is separate but still incorporates many of the ideologies present in civilian society.

²²⁶ Moore, *Plowing My Own Furrow*, p. 138.

²²⁷ Seidenberg, *I Refuse to Serve*, p. 506.

Chapter Four: Pragmatic Alignment and Permanence

Until the Second World War, Congress viewed the Disciplinary Barracks system as a short-term solution to address a short-term problem, rather than as a permanent military institution. In the 1890s, when desertion rates had decreased dramatically from the previous decades, Congress closed the facility for civilian needs. In the period immediately after the First World War, limited reforms were made to the *Articles of War*, but Congress once again made cuts to the program in favour of civilian programs. The Second World War, however, was different, in the sense that the Disciplinary Barracks achieved permanence as an institution and that permanence resulted in more pragmatic alignment with civilian practices. After the First World War, many Americans believed that the post war period would be *status quo antebellum* in terms of the isolation of the United States from the rest of the world. The military was cut back to peacetime levels, and the civilian and military spheres returned to a state of relative isolation. The Second World War, however, was a different story in that the American illusion of isolationism was shattered. The defeat of the Axis powers did not signal the end of American mobilization in the same way as the defeat of the Central Powers did after the First World War. When the war ended, the United States found itself in the midst of the Cold War, leading to a shift in the way that military institutions were perceived in American culture. The United States could no longer rely on a small peacetime army or temporary institutions to fight wars as they arose. America needed permanent military institutions and a professional military force that reflected society's ideals, rather than being isolated from them. This is the historical context that allowed the Disciplinary Barracks to be transformed into a permanent military institution.

The Disciplinary Barracks institution changed significantly as a result of the Second World War, moving closer to the goals of its founding. The extant histories of Leavenworth do not analyse the significance of this change, they simply focus on the fact that the military correctional policy adopted

innovative features to deal with the influx of prisoners. It is far more complex than a simple matter of dealing with the increased number of prisoners. This chapter will demonstrate that the unique situation of the Second World War and the immediate aftermath of the Cold War resulted in the Disciplinary Barracks transforming into a permanent military institution with pragmatically aligned practices and policies. Because of the unique historical context, the institution was forced to adapt and was placed into a situation in which it was allowed to do so. The key developments of the institution which demonstrate this fact are the restoration program, the development of military psychiatry, and the expansion of the Army parole program after the war. During the war, military necessity required the restoration to duty of as many men as possible, but the unique situation of civil-military relations led to more of a pragmatic alignment between military goals and civilian correctional principles. Various external factors led to the Disciplinary Barracks achieving permanence as a military institution, leading to further alignment with civilian values in a more controlled way, rather than requiring such massive shocks to the system as a world war. This chapter will, out of necessity, focus on elements of the Disciplinary Barracks institution that deviate from Fort Leavenworth. Primarily, this will be a focus on the Rehabilitation Centres that were established during the Second World War. These facilities performed a key function in changing how Fort Leavenworth operated, as well as how it was viewed by the public. Later, when these Rehabilitation Centres became a permanent fixture of the military justice system during the Vietnam War, Fort Leavenworth as a metonym for the harshness of military justice became cemented.

Not long after the First World War, the public once again lost interest in military justice and military incarceration, resulting in more financial cuts to the Disciplinary Barracks system. The war was over, and reforms to the *Articles of War* meant that incarcerated soldiers now had an extra appellate

process in the form of the Board of Review.²²⁸ However, according to Captain David A. Schlueter in *Military Law Review*,

...a troublesome aspect remained. A single commander could prefer charges, convene the court, select the members and counsel, and review the case. The spectre of unlawful command influence lingered. But in the quiet, peacetime years which followed the 1920 revision, this caused little concern. The citizen soldier returned to his work, the regular forces were involved in no major discipline problems, and the 1920 Articles of War seemed to function smoothly. With only minor amendments, these articles were those used by courts-martial during World War II.²²⁹

Without articulating it directly, Schlueter identified the effects of civil-military relations on the military justice system in the period following the First World War. Once again, military justice reform followed a familiar formula. An external event generates public interest because military justice affects civilians, but once that event ends so does public interest in military justice reform. In this particular instance, the main issue that the civilian public cared about was the relatively high numbers of men who were incarcerated within the military prison system due to the lack of appellate process in the court-martial system. But the Board of Review had cleared the backlog by 1920 and granted clemency to many of the prisoners. When that process was complete, the military and civilian worlds became divorced once again and the pre-war status quo of military isolation was resumed. To that end, in 1929 the Disciplinary Barracks at Fort Leavenworth was turned over to civilian authorities to serve as an annex for the civilian United States Penitentiary at Leavenworth, to deal with the increased number of federal prisoners due to the strengthening of federal laws during the 1920s and 30s. For Congress, the needs of the civilian justice system superseded the needs of the military. Edward A. Krieger, the Judge Advocate General at

²²⁸ Cpt. David A. Schlueter, 'The Court-Martial: An Historical Survey', *Military Law Review*, vol. 87, (1980), p. 157.

²²⁹ *Ibid*, pp. 157-158.

the time, is quoted saying that such a transfer would contradict the intent of the law establishing Fort Leavenworth as a military prison.²³⁰ Despite Krieger's protestations, the facility was transferred and was operated as the United States Penitentiary Annex for 11 years. Then in 1933, Alcatraz Island, which had previously been operated as the Pacific branch of the Disciplinary Barracks, was also converted to a federal prison for civilians, in a similar manner to Fort Leavenworth.²³¹ The only facility remaining within the Disciplinary Barracks system was the Atlantic branch at Fort Jay, New York.²³² There are no available sources on how Fort Jay was run during this time, but the military sources imply that it followed the same policy that had been developed at Fort Leavenworth.

Huntington explains the public disengagement with military affairs as a return to the dominance of business pacifism in the 1920s.²³³ He states that "The ideas and institutions which had been produced during the years of business rejection reflected intense professionalism on the outskirts of society."²³⁴ As previously discussed, this applies to the Disciplinary Barracks in that most of its policy development did not include civilian ideals. "The opposition", Huntington goes on, "was not a few pacifists and radicals. It was America itself. Rejected again, there was nothing for the military to do but to retreat back to their pre-war isolation and find interest and satisfaction in the mundane duties of their profession."²³⁵ The Disciplinary Barracks as a military institution was no exception to this, and suffered from the same neglect it did in the past. Although it remained on life support operating out of Fort Jay, its future was precarious as it was yet to achieve permanence.

The fate of the Disciplinary Barracks changed with the outbreak of the Second World War as Congress recognised the need for a robust military justice system. Based on the previous record of

²³⁰ Price, *History of the USDB*, p. 30.

²³¹ *Ibid*, p. 31.

²³² *Ibid*, p. 31.

²³³ Huntington, *The Soldier and the State*, p. 289.

²³⁴ *Ibid*, p. 289.

²³⁵ *Ibid*, p. 288.

increases in military disorder during wartime, the War Department began reviving several institutions of military justice. America's military institutions suffered cuts after the First World War ended, meaning that the lessons learned during the War were not carried very far. America, for the most part, believed that the *status quo antebellum* would be restored in terms of isolationism, expecting that the nation could withdraw from world affairs again and the military could be cut back to peacetime levels. Among the first military institutions to be cut was the military police.²³⁶ Despite the protests of Brigadier General Harold Bandholtz, the pioneer of the US military police, to convince Congress of the necessity of a permanent military police branch due to the difficulties of recreating it from scratch every time there is a new war, the military police units were once again disbanded at the conclusion of the conflict.²³⁷ As predicted by Bandholtz, a military police corps was needed once again when America was drawn into the next global conflict. On 26 September 1941, Congress officially established the United States Military Police Corps, this time making it a permanent fixture of the American military.²³⁸ Again, the necessity of having a military police force was brought about by a massive influx of citizen soldiers.²³⁹ The Disciplinary Barracks system was also included in this revival of military justice institutions on the eve of war. Leavenworth remained under civilian control as the USP Annex until 16 November 1940, at which point the facility was returned to the War Department at the request of the Secretary of War to, once again, serve as a military prison.²⁴⁰ This time, its status as a military institution would be permanent.

The Second World War presented a unique set of circumstances that the US military had to deal with, particularly in regards to manpower requirements. No previous war had ever required the manpower levels necessary to effectively fight the Second World War, and as such the military could not

²³⁶ Wright, *Military Police*, p. 10.

²³⁷ *Ibid.*

²³⁸ *Ibid.*, p. 9.

²³⁹ Stephen E. Ambrose, *Citizen Soldiers: The US Army from the Beaches of Normandy to the Surrender of Germany*, (Sydney: Pocket Books, 1998), pp. 13-15.

²⁴⁰ Price, *History of the USDB*, p. 31.

afford to lose a single man to trivial charges under the *Articles of War*. According to the *Army Almanac* a total number of 11,367,989 military personnel served between 1940 and demobilization in 1948.²⁴¹ This is more than double the number of personnel who served in the First World War, making the increase in disciplinary problems a serious issue. The issue of a massive influx of citizen soldiers from the previous war returned, with this added concern of returning as many of them as possible to the frontlines. The progress narratives present a positive view of how the Disciplinary Barracks system coped with these stresses of the Second World War, but they do not analyse it in the context of the post-war aftermath. Price names three significant innovations that contributed to the relative success of the institution in dealing with such a high volume of incarcerated men. Price once again states that with the increasing population of the prison that “disciplinary problems increased proportionately.”²⁴² He further states that the massive influx of prisoners “just about taxed the system to bursting point.”²⁴³ The first development that Price names is that many prisoners who were sentenced to short terms of incarceration during the war were held at facilities located overseas.²⁴⁴ “It was deemed unfair,” Price states, “to soldiers serving honorable [sic] in combat zones to return men sentenced to dishonourable discharge to the safety and comparative comfort of the Disciplinary Barracks and Federal penal institutions in the continental United States.”²⁴⁵ This is in keeping with criminologist Stanley L. Brodsky’s argument that the difficulty in deterring military offenders lies in making incarceration in a military correctional facility a less desirable option than frontline service without being so cruel as to affect rehabilitation.²⁴⁶ Price estimates that around 23,000 general prisoners were held in overseas facilities throughout the war, of which only 7,000 were considered non-restorable.²⁴⁷ This policy achieved the dual result of making military incarceration

²⁴¹ *The Army Almanac*, p. 654.

²⁴² Price, *History of the USDB*, p. 36.

²⁴³ *Ibid*, p. 38.

²⁴⁴ *Ibid*, pp. 38-39.

²⁴⁵ *Ibid*, p. 38

²⁴⁶ Brodsky, ‘Crime and Justice in the Military Services’, p.6.

²⁴⁷ Price, *History of the USDB*, p. 39.

a less desirable option than frontline service, as well as keeping complaints of the military justice system away from home. Secondly, Price states that the Army established specific facilities aimed at the rehabilitation of military offenders who were given punitive discharges, demonstrating the military's commitment to the concept of rehabilitation. According to statistics gathered by John Morris Gray in his 'Evaluation of the Army's Restoration Program', between 1940 and 1946, 84,245 men went through the Disciplinary Barracks system, of which 42,373 were restored to active duty.²⁴⁸ Gray references a study that was conducted on the men restored which found that 80 percent of restorees were serving satisfactorily in their respective units six months after their release.²⁴⁹ Price credits this successful policy of restoration as the third crucial factor in the success of the Disciplinary Barracks system during the Second World War. Price writes that "World War II was the severest test of the Disciplinary Barracks since its inception in 1875. The system proved more than adequate to accomplish its mission. This period also pointed out the need for a formalized program geared toward returning selected prisoners to duty."²⁵⁰ This analysis of the situation is accurate to a point, but Price does not take into account the complaints that came after the war, nor does he give enough details of the external context that contributed to these civilian-like developments. For Price, the success of these three developments was that they kept men out of the Disciplinary Barracks system, which prevented the overcrowding issues of the previous war. The developments were much more significant than that, and represented a shift in military penology.

Unlike the previous war, there was little civilian criticism of the military justice system during the course of the Second World War. The lack of criticism during the war does not mean that the system was working perfectly, as evident from the need for the *Uniform Code of Military Justice* to replace the

²⁴⁸ Gray, 'Evaluation of Army's Restoration Program', *The Military Prison*, p.112.

²⁴⁹ *Ibid.*

²⁵⁰ Price, *History of the USDB*, p. 42.

Articles of War after the war. Huntington's argument about the state of civil-military relations during the war, and Janowitz's theory of convergence explains why there was little complaint during the war period.²⁵¹ Huntington argues that during the war military leaders adopted civilian ideals and applied them to the manner in which they conducted their campaigns. He states that "The military leaders blended with the liberal environment; they lost their alien aloof character and emerged as the supreme embodiment of the national purpose."²⁵² He further states that "In the area of policy and strategy, the military ran the war just the way the American people and American statesmen wanted it run...The power of professional military leaders reached unprecedented heights in World War II. But they scaled these summits only by sacrificing their military outlook and accepting the national values."²⁵³ This is in line with Janowitz's theory of convergence in civil-military relations, which holds that the best way to maintain civilian control of the military is to civilianize the military.²⁵⁴ Huntington and Janowitz agree that this happened during the Second World War, they just differ on whether or not this is the best policy moving forward. But this convergent cooperation did not last and issues of military justice became more contentious after the war. Huntington states that "The outstanding aspect of civil-military relations in the decade after World War II was the heightened and persistent peacetime tension between military imperatives and American liberal society."²⁵⁵ He further states that "Military requirements thus became a fundamental ingredient of foreign policy, and military men and institutions acquired authority and influence far surpassing that ever previously possessed by military professionals on the American scene."²⁵⁶ Applied to the specific case of military justice and penology, this argument explains both why there was a lack of criticism of the system during the war, and why the system was

²⁵¹ Janowitz, *The Professional Soldier*, p. 1.

²⁵² Huntington, *Soldier and the State*, p. 315.

²⁵³ *Ibid.*

²⁵⁴ Janowitz, *The Professional Soldier*, 234.

²⁵⁵ Huntington, *Soldier and the State*, p. 345.

²⁵⁶ *Ibid.*

radically altered after the war. Due to the unique circumstances of the Second World War, the Disciplinary Barracks system was not only revived, but expanded on in a convergent manner. Many of the elements implemented at the Disciplinary Barracks resemble civilian justice elements, such as rehabilitation.

As with the previous war, a key issue that remained within the military justice system, and one which Price does not address, was command influence over court-martial proceedings. This contributed to Price's comment that "disciplinary problems increased proportionately," which is quite the understatement, as examining the court-martial system again reveals.²⁵⁷ According to Captain John T. Willis, a Judge Advocate and contributor to *Military Law Review*, as soon as the war ended the public began agitating for reform of the military justice system, as they did after the First World War.²⁵⁸ Despite the reforms of 1920, there were still a significantly high number of courts-martial, and subsequently a high number of men sentenced to terms of incarceration. For the Army alone, during the period between 1942 to 1945 there were a total number of 2,053,816 courts-martial convened, including general, special, and summary courts-martial.²⁵⁹ From this number, according to statistics gathered by Gray, 84,245 men were sentenced to punitive discharges after terms of incarceration. It must be noted that while Willis' statistics count the number of courts-martial that were convened during the period, they do not determine how many individual offenders there were as individual soldiers could have been tried multiple times throughout their careers. Willis quotes Ernest Gibson, an officer who acted as a military judge during the war, who gave an account of what was expected of trial judges during the war.

²⁵⁷ Price, *History of the USDB*, p. 36.

²⁵⁸ Willis, 'The US Military Court of Appeals', pp. 39-41.

²⁵⁹ *Ibid*, p. 40.

We were advised, not once but many times, on the Courts that I sat on, that if we adjudged a person guilty we should inflict the maximum sentence and leave it to the Commanding General to make any reduction...I was dismissed as a Law Officer and Member of a General Court-Martial because our General Court acquitted a colored man on a morals charge when the Commanding General wanted him convicted – yet the evidence didn't warrant it. I was called down and told that if I didn't convict in a greater number of cases I would be marked down in my Efficiency Rating; and I squared right off and said that wasn't my conception of justice and that they had better remove me, which was done forthwith.²⁶⁰

Gibson's observation demonstrates the clear divide that existed between military and civilian notions of justice at the time, reflected in the effects of command influence. Although he was a military officer, Gibson's notion of justice was more in line with civilian ideals in that justice should be an objective search for truth. This opposed to the notion of military justice being imposed on Gibson from the top down as a mechanism to restore discipline, regardless of whether or not the accused was actually guilty.

Despite the issues that arose from this practice of passing overly harsh sentences for trivial infractions during the First World War, the practice continued into the Second. Another more well-known example of command influence over the military justice system is the general court-martial of Lieutenant Richard Winters of the 101st Airborne Division. In 1944, before the invasion of Normandy, Winters was ordered by his company commander, Captain Herbert Sobel, to inspect the company latrines at 1000 hours. He carried out his orders at that time, but was later informed by Sobel that he had changed the time to 0945, and as such Winters had failed to carry out his orders. Sobel attempted to issue a non-judicial punishment to Winters to make an example of him, but Winters submitted a letter of appeal to the battalion command post requesting trial by court-martial. Eventually, the court-

²⁶⁰ Ernest W. Gibson quoted in Willis, 'The US Military Court of Appeals', pp. 41-42.

martial was thrown out by the convening authority, Colonel Robert Sink, due to Sobel's own inadequacies as a combat commander, so Winters was returned to his company with the charges dropped.²⁶¹ Although there were no charges in this instance, it demonstrates how fickle the nature of charges under the *Articles of War* could be due to the power of command influence. The Board of Review that had been established after the previous war did have an effect at reducing the number of cases that the Office of the Judge Advocate General had to go over, but thousands of men still found themselves incarcerated during the war. The example of Gibson demonstrates that courts-martial often resulted in a guilty verdict due to command influence, while the qualitative example of Winters' situation shows just the kind of charges that commonly resulted in a court-martial proceeding. Price may focus on the positive elements of the Disciplinary Barracks during the war, but the fact remains that not much had changed within the court-martial system since the First World War. Men were still being convicted for minor charges and sentenced to terms of incarceration at the Disciplinary Barracks.

The post war criticism of the military justice system resulted in the passage of the *Uniform Code of Military Justice* which replaced the *Articles of War* permanently. The UCMJ addressed many of the issues previously raised with the military justice system, making the rights of the accused clearer and giving them more protections. This was a major breakthrough for military penology as well as military justice in general, as it addressed the key issue that resulted in so many incarcerations of civilians during wartime; the military appellate process. Willis states that the American public demanded the reform of military justice after hearing stories of injustices.²⁶² Willis argues that, until the passage of the Uniform Code of Military Justice, soldiers were not protected by the Bill of Rights.²⁶³ This also resulted in expansion of the clemency policy as well as creating the Court of Military Appeals, a civilian run

²⁶¹ Dick Winters and Cole C. Kingseed, *Beyond Band of Brothers*, (Random House eBooks, 2006), p. 54.

²⁶² Willis, 'The US Military Court of Appeals', pp. 39-41.

²⁶³ *Ibid*, p. 49.

appellate court for the review of sentences passed by courts-martial. This was a significant towards pragmatic alignment in the military justice system as it aided in the reducing command influence on trials by giving the accused a civilian appellate option, while at the same time making the rights of the accused much clearer. The military sources do not analyse this particular element of the military justice system, even though it is important in explaining the future success of the institution. The Court of Military Appeals was an element that was forced on the military due to external and internal pressures.

Pragmatic alignment had implications for military penology, particularly in the realms of rehabilitation and restoration to duty. The harsh methods of earlier periods were cast aside, and replaced by the philosophy of rehabilitation, achieved primarily through military psychiatry. The philosophy of rehabilitation had always been present within the institution as an idea, but it was during this period that a specific policy was implemented to properly achieve the goal of restoring as many men as possible to active duty. As stated by Price, this function was separated from the main USDB facilities during the war, and special dedicated rehabilitation centres were utilised to achieve the goals of the restoration policy. Once again, Price does not analyse the significance of this policy beyond stating that it relieved pressure on the Disciplinary Barracks by reducing the number of inmates. Much of the information about these rehabilitation centres comes from the Chief of the Professional Supervision Section in the Neuropsychiatry Consultant's Division in the Office of the Surgeon General, Major Ivan C. Berlien. After the war he wrote a scholarly article in defence of the rehabilitation centres. Reaffirming that military thinking shifted during this time to bring it more into line with civilian ideology, Berlien states in the article that "...evidence is clear that the less imprisonment, the better, the less punishment, the better and the more teaching, retraining, and social reintegration, the better."²⁶⁴ This sounds similar to the rhetoric of rehabilitation seen previously with figures such as Thomas F. Barr, but this time the

²⁶⁴ Ivan C. Berlien, 'Rehabilitation Center: Psychiatry and Group Therapy', *Journal of Criminal Law and Criminology* (1931-1951), vol. 36, no. 4, (1945), pp. 249-255.

policy came to fruition as the restoration statistics show. The unique circumstances of the Second World War meant that the rehabilitation centres were able to achieve the goal of restoration to duty on a scale not seen previously within the institution.

A key development that demonstrates the pragmatic alignment of these rehabilitation centres was the utilization of psychiatry within the military justice system. According to Major James J. Gibbs in *Military Law Review*, psychiatric evaluation had been a factor in the military justice system since the M'Naughten rules for criminal culpability were adopted by the military justice system in the nineteenth century.²⁶⁵ "In actual practice," Gibbs states, "the military psychiatrist appears infrequently as an expert witness in a court-martial, and when he does appear he is usually called by the prosecution."²⁶⁶ Gibbs goes on to say that "As a rule when the defendant as the result of pretrial psychiatric examination is found to have a mental disease, defect or derangement that renders him unable to distinguish right from wrong, adhere to the right, or to cooperate in his own defense, he is not brought to trial, and he is released to the medical authorities for treatment and ultimate disposition."²⁶⁷ So, psychiatry had always existed within the military justice system, but it was not until the Second World War that it was utilized to a significant extent in the rehabilitation and restoration of the offender. Gibbs also states that civilian criticisms of the military system is based on their dissatisfaction of the M'Naughten rules in favour of the Durham Decision.²⁶⁸ On the subject of sociopathic psychiatric issues that civilian psychiatrists consider a mental disease rather than an indication of wrong doing, Gibbs voices his disagreement of this by stating that "In this area psychiatrists are not experts, and the problem must be dealt with by judicial

²⁶⁵ Gibbs, 'The Role of the Psychiatrist in Military Justice', p. 51.

²⁶⁶ *Ibid*, p. 52.

²⁶⁷ *Ibid*.

²⁶⁸ *Ibid*, p. 53.

authorities and penologists.”²⁶⁹ Disagreement over the military’s use of psychiatry during the court-martial phase remains contentious.

This expansion of psychiatry within the military during the Second World War also extended to military penology. According to Berlien, “The role of the psychiatrist in military prisons has been recognized and enlarged since World War I.”²⁷⁰ He goes on to say that “In October 1942, nine cadres of five officers each, detailed by the service commands, were ordered to the US Disciplinary Barracks, at Fort Leavenworth, for an intensive course in orientation in the operation of that institution. These cadres later returned to their respective service commands and set up Service Command Detention and Rehabilitation Centers.”²⁷¹ Following this, in November 1943 the Army Service Forces encouraged the Rehabilitation Centers to use psychiatric methods to screen out those prisoners that could not be restored to duty so that they could be transferred to a Disciplinary Barracks or other Federal correctional facility to serve out their sentences.²⁷² As the Second World War restoration policy developed, military psychiatry became more imbedded in the military prison system, as well as the court-martial system itself. In 1941, the Department of Psychiatry and Sociology was set up at the Disciplinary Barracks at Fort Leavenworth, representing a penological shift from the harsh physical methods that were used during the First World War.²⁷³ According to Berlien, many commands during the Second World War had it as standard operating procedure to have the accused examined by an army psychiatrist to determine if they were of sound mind. Many who were found to be mentally ill were sent to hospital rather than prison. He states in the official psychiatric textbook for the military that “If convicted, the prisoner soon met a psychiatrist at the rehabilitation center, disciplinary barracks,

²⁶⁹ *Ibid*, p. 55.

²⁷⁰ Ivan C. Berlien, ‘Psychiatry in the Army Correctional System’ in *Neuropsychiatry in World War II*, vol 1, (Washington D.C.: Office of the Surgeon General, Department of the Army, 1966), p. 491.

²⁷¹ *Ibid*, p. 492.

²⁷² *Ibid*, pp 498-499.

²⁷³ Price, *History of the USDB*, p. 35.

or Federal Penitentiary to which he was sent. The primary function of these institutions has always been the restoration of prisoners to duty as soldiers.”²⁷⁴ Here, Berlien may just be echoing the original rhetoric about the original purpose of the Disciplinary Barracks system, but he is also revealing the change in function. There were no psychiatric evaluations of the conscientious objectors during the First World War.

It is important to go beyond Price’s brief mention of the introduction of psychiatry and sociology at Leavenworth in order to more comprehensively analyse its significance to pragmatic alignment in the field of military penology. Military psychiatry began in earnest after the First World War, when a predominant military belief was that military offending, along with other mental conditions such as post-traumatic stress disorder, or shell shock as it was known at the time, was the result of a weak constitution of the individual which could be eliminated from the service through improved screening of potential recruits.²⁷⁵ Colonel Albert J. Glass argues that World War I psychiatry eliminated overt psychotic disorders, but not covert or neurotic ones.²⁷⁶ This belief that psychiatric problems could be eliminated at induction continued after the First World War and up to the Second World War.²⁷⁷ Furthermore, Glass states that before the war, army psychiatry was not as well developed. Personnel who were diagnosed as “insane” were either immediately discharged, or transferred to the Government Hospital for the Insane.²⁷⁸ During the Second World War military psychiatry became more engrained within the military justice system in a manner that was reflective of civil-military relations at the time.

Public approval of these programs in the manner consistent with Huntington’s argument about civil-military relations is evident from the way that the media praised the military prison system,

²⁷⁴ Berlien, ‘Psychiatry in the Army Correctional System’, p. 491.

²⁷⁵ Col. Albert J. Glass, ‘Army Psychiatry Before World War II’, *Neuropsychiatry in World War II*, vol. 1 Edit. Col. Robert S. Anderson, (Washington D.C.: Office of the Surgeon General Department of the Army, 1966), p. 7.

²⁷⁶ *Ibid*, p. 8.

²⁷⁷ *Ibid*, p. 10.

²⁷⁸ *Ibid*, p. 5.

particularly the rehabilitation programs. On 5 May 1943 the *New York Times* ran a piece praising the new rehabilitation program entitled 'Army Reclaims its "Black Sheep."' The article focused on one of the new rehabilitation centres at Camp Pickett, Virginia, claiming that the methods used at the facility used the modern principles of psychiatry in order to rehabilitate offenders and restore them to active service. The article states that "In carrying out the plan, the Army has not been afraid to use modern methods of psychology, psychiatry and sociology." The article reveals the underlying purpose as well in the numerous quotes from military officials claiming that manpower is too precious to waste through overly punitive articles of military justice. The commander of the post, Colonel John D. Markey, is quoted as saying "The bad boy on the post sometimes makes the fightingest [sic] soldier at the battlefield."²⁷⁹ This is a shift from the First World War mentality of the military that discipline is the most important aspect of military justice, now it is a pragmatic ideology based on getting as many men back to the front as possible.

The complaints of injustice that followed the Second World War demonstrates that the lack of critique was a temporary result of the unique situation of the Second World War in regards to civil-military relations. The lack of critique does not demonstrate that the system was working perfectly, but rather is reflective of the public's support of the military during the war, for reasons discussed by Huntington. The *Uniform Code of Military Justice* was created in response to many of the issues arising from the Second World War. Comparing the statistics of restoration from the Second World War to the Korean War shows that the policy was just starting to stabilise and work in conjunction with some of the other innovations to the system at the time, such as parole and clemency. Gray confirms this by saying that the Army was not ready for the rehabilitation, restoration, and clemency mission at the start of the Second World War, but rather, the system was adapted during this era out of necessity. The modern

²⁷⁹ Sidney Shalett, 'Army Reclaims its "Black Sheep"', *The New York Times*, (New York: 5 May 1943), p. 48.

system emerged as one intended to be dynamic so that it could be applicable in both war and peace.²⁸⁰

The Korean War did not have the same manpower requirements as the Second World War, which differentiated the two periods. As such, military necessity did not require the military's restoration policy to be as lenient as it was in the Second World War. What this demonstrates is the levelling out of the military justice system to the current level it sits at; pragmatic alignment of civil and military ideologies. For example, during the period between 1 July 1950 and 30 June 1956 there were 43,000 punitive discharges passed down by courts-martial, of which 1,800 were restored and 5,800 were paroled.²⁸¹ Despite the proportionately lower number of personnel serving, the percentage of restored prisoners was far lower during the Korean War than it was during the Second World War. Nearly fifty percent of punitive discharges were restored to duty during the Second World War, while only about four percent were restored during the Korean War. According to Herman L. Goldberg and Frederick A.C. Hoefer, officers who were involved with the army parole and clemency program in the 1940s and 50s, this was in part due to the expansion of the parole system in 1946 and its combination with the post-war clemency program.²⁸² The expansion of the parole system is another example of post-war reform due to the criticism that had not surfaced until after the war.

The Army's parole system was expanded after the Second World War, and was brought more into line with its civilian counterpart. Goldberg and Hoefer argue that in administering its parole system, "the Army has followed accepted standards of modern penology as developed in good civilian parole practice and modified by the particular needs of the Army administration."²⁸³ Again, the integration of

²⁸⁰ Gray, 'Evaluation of Army's Restoration Program', *The Military Prison*, p.115.

²⁸¹ *Ibid*, p.113.

²⁸² Herman L. Goldberg and Frederick A.C. Hoefer, 'Army Parole System', *Journal of Criminal Law and Criminology*, vol. 40, Issue 2, (1949), p. 159.

²⁸³ *Ibid*, p. 169.

civilian principles in this area represents pragmatic alignment of civilian practices within military corrections. They go on to explain how this convergent system works:

Each Clemency and Parole Board consists of a civilian penologist as chairman and two Army officers, one representing the Judge Advocate General's Department and one an experienced combat officer...Its decision is subject to review by an Advisory Board on Parole which is similarly composed of a civilian chairman and two Army officers, one designated by the Secretary of the Army and one by The Adjutant General...In accordance with good civilian parole practice, the Clemency and Parole Boards have consistently held that a prisoner must satisfy certain standards other than the mere technical requirements of eligibility, in order to be released on parole.²⁸⁴

This is another example of pragmatic alignment, shifting the goals of military corrections from purely punitive discipline, to adopt the rehabilitative ethos lauded by many civilian penologists. Unlike the planned but failed cooperative review board of the prison in the 1870s, this cooperative parole and clemency board actually came to fruition due to the unique shift in civil-military relations during the Second World War.

During the Second World War, the priority was to get as many men as possible back to active duty. But after the war, ideas surrounding military psychiatry were expanded and philosophy of military parole was developed further. Parole focuses on reintegrating the military offender back into civilian society after a punitive discharge sentence, rather than the restoration goal of getting them back into service. For Goldberg and Hoefer, the military justice system was in a unique situation to prepare men for their return to civilian life. They argue:

²⁸⁴ Goldberg and Hoefer, 'Army Parole System', p. 162.

By the very nature of their offences, most military offenders are probably better prospects for parole than the average inmate of a state or Federal prison; this applies especially to AWOL and desertion cases that constitute a large part of the inmate population in the USDB's. In this group there are many young men whose civilian history prior to entry into the service was more or less average and uneventful; they may never have been arrested by the police nor suspected of serious delinquency. These men were able to satisfy the requirements of society as long as they were civilians. When they entered the Army, they sooner or later encountered situations of stress to which they were unable to adjust, finally resulting in AWOL. Desertion, or other offences of a military nature. In some cases, the initial transition from civilian to military environment was unsuccessful.²⁸⁵

Goldberg and Hoefer further develop this idea by arguing that "The Army parole procedure may be viewed as one phase of larger and more widespread services for the returning serviceman, aiming at his social reintegration into his home community. The Army is but one of many public and private agencies that are cooperating in this effort. In contributing its share to this program of reintegration, the Army is performing a vitally needed service to the community."²⁸⁶ Here is a direct example of pragmatic alignment. Previously, the military's approach to the wayward soldier had primarily been to attempt to restore discipline, and to punish if that effort failed. The idea that the military prison could prepare a wayward soldier for life as a civilian if they were not at all suited for military life was a new concept that had developed in conjunction with military psychiatry. Before the First World War, the prevailing view within the military was that inability to perform as a soldier was the result of mental weakness or cowardice. After the war, with the discovery of issues such as shell-shock, the idea that some people were more predisposed to falling victim to the stress of battle and the rigors of military discipline led to

²⁸⁵ Goldberg and Hoefer, 'Army Parole System, p. 163.

²⁸⁶ *Ibid*, p. 169.

more intensive screening methods. This also opened the way for more lenient punishments within the military prison system. As shown previously, absolutist conscientious objectors during the First World War suffered the harshest punishments within the military prison system due to this belief. But with a change in attitude, these methods no longer made any sense. Some men are not cut out to be soldiers, but that does not mean that they cannot be productive members of society. The adoption of the reformed parole system and the expansion of clemency represents this shift. The purpose of Army parole, as stated by Goldberg and Hoefer, is to ensure that those prisoners who are deemed non-restorable are reintegrated back into civilian life safely and efficiently.

The Second World War was an important turning point in the process of the United States Disciplinary Barracks becoming both a permanent and pragmatically aligned military institution. Like the First World War before it, the Second World War required millions of men at arms, meaning that millions of civilians were inducted into the ranks of the military. Because the reforms based on the previous war were limited due to the lack of public interest after the war, many of the same problems came up again, mainly, a civilian lack of familiarity with the military justice system, and a backlog of prisoners due to a lack of appeals processes. However, the Second World War presented a unique problem for the military in that it required a higher level of manpower than any war previously. This led the military justice system to institute a lenient restoration program based on a 1915 law which restored more than fifty percent of discharged soldiers to duty. This system was in response to the unique circumstances of the war and was not sustainable. Primarily, a lack of civilian criticism during the war allowed the prison system to function unhindered. But after the war, criticism increased and unlike the previous war, it did not fade before pushing through real and meaningful reform of the military justice system. The passage of the *Uniform Code of Military Justice* and the changes to the military penal system pushed the military justice system more towards pragmatic alignment, granting the military courts a wider array of tools for dealing with an offender that did not always call for harsh, draconian

discipline. This hybrid system also allowed the process of pragmatic alignment to stabilise, so it no longer requires huge shocks, such as a world war, to force major reforms through.

Conclusion

The Disciplinary Barracks system did not evolve in an isolated vacuum of military thought. Throughout its history, Leavenworth experienced pressures from its intersection with the civilian sphere, which led to the pragmatic adoption of practices more in line with the liberal values of wider American society. This was not an inevitable progression, and it is unclear whether more convergence, as Janowitz calls it, is even a desirable way to make military institutions fit for purpose. It is certainly an effective method of civilian control of the military, but if it is at the cost of military functionality and combat readiness then it is not worth it. By presenting the history of Leavenworth and the Disciplinary Barracks system as a linear progression towards convergence without analysis, the progress narratives of Henry Shindler and Major Jerry Price neglect the significance of the broader historical context. The teleological approach is not suitable for the study of military institutions such as Leavenworth as it does not take into account the wider historical forces that have contributed to its evolution. What has resulted from this historical process of change is a military institution that is both functional, and enjoys a level of acceptance from the civilian world that allows it to continue its existence. Huntington's functional and societal imperatives have merged at Leavenworth as the institution is functional because it has pragmatically adopted civilian principles of penology.

This thesis has demonstrated that Leavenworth and the wider Disciplinary Barracks system were developed as a result of historical changes, brought about by internal and external civilian pressure caused by the intersection of the two spheres, particularly defined by three major events. The first was the push for reform by Major Thomas Francis Barr. He was a military officer, but brought his experience as a civilian lawyer with him in his push for reform. His ideas created the nucleus of the institution, but various other external and internal factors resulted in his vision not being realised at the time. Mainly, these were cuts to funding and the fact that his reforms were implemented by professional military

officers who, at the time, had a purely military ideology that was isolated from mainstream civilian society. The second major point of change was the First World War. Millions of civilians were pushed into military service, and thousands of citizen soldiers flooded Leavenworth and the Disciplinary Barracks system. This massive external pressure to the system brought it back into the public consciousness, and forced more civilian reforms on the institution. The third significant event was the Second World War, where once again millions of civilians once again were pushed into military service. The difference between this and the First World War was the massive manpower requirements and the need to return as many men as possible to active service. This led to a broad restoration program within the Disciplinary Barracks system. Furthermore, the civil-military environment at the time was one of convergence, allowing many civilian theories and practices to filter into the Disciplinary Barracks system. Then after the war, partly because America found itself in the midst of the Cold War, the institution became a permanent one in the US military.

The Disciplinary Barracks institution that exists today is similar in many respects to the system that was established permanently in the 1950s. The main notable difference is that the rehabilitation centres of the Second World War were re-established during the Vietnam war, and as such all restoration programs were moved away from Leavenworth. Leavenworth itself is now the only maximum-security prison operated by the military, for those soldiers who are serving the harshest sentences under the *Uniform Code of Military Justice*. The code itself has gone through numerous reforms since Vietnam, but nothing as drastic as its establishment during the 1950s. Due to the historical changes analysed in this thesis, the Disciplinary Barracks has become a permanent institution in the United States. It remains a separate military prison which has adopted certain civilian principles in order to maximise its functionality.

The permanent status of Leavenworth does not mean that it is finished evolving as an institution, or that any further evolution will be a positive change. The benefit of abandoning the

teleological narrative of Leavenworth is that each event can be considered in its proper context, and an informed decision can be made about whether or not to make changes to the institution to make it function more effectively. Whether that means adopting more civilian methods because they work, or abandoning any extant programs because they do not, the decision should be made on a case by case basis and consider the context. Certain contemporary events have once again cast the public eye on issues of military justice, and may result in more reforms. For example, all combat roles were opened to women in 2015, bringing a new segment of the civilian population into the military.²⁸⁷ New issues are being revealed by this in a manner similar to past events when civilians enter the military. Primarily, the manner in which the *Uniform Code of Military Justice* handles sexual assault cases is drawing fire from civilian critiques.²⁸⁸ The next driver of change in military justice could bring the handling of sexual assault cases more in line with the civilian justice system. Furthermore, the War on Terror has brought military justice and incarceration back into the public spotlight. With the ambiguities of unconventional warfare and the rules of engagement, many soldiers are finding themselves on the wrong end of a court-martial.

Historical events have led Leavenworth to adapt to both the functional imperative, and the societal imperative of convergence. The events which forced change on the institution also forced it to adapt. Now that it is a permanent institution it can continue to improve its policies in order to become more functional. Whether that means adopting more civilian practices would depend on the situation. As this thesis has shown, the evolution of Leavenworth has been driven by historical events; not some greater teleological purpose. Therefore, it is uncertain what the future will bring for Leavenworth.

²⁸⁷ Matthew Rosenberg and David Phillips, 'All Combat Roles Now Open to Women, Defense Secretary Says, *New York Times*, 3 December 2015. Accessed 22 February 2018.

<<https://www.nytimes.com/2015/12/04/us/politics/combat-military-women-ash-carter.html>>

²⁸⁸ Jennifer Steinhauer, 'Navy Hearing in Rape Case Raises Alarm', *New York Times*, 20 September 2013. Accessed 22 February 2018. <<http://www.nytimes.com/2013/09/21/us/intrusive-grilling-in-rape-case-raises-alarm-on-military-hearings.html>>

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